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REPORT.

TO THE HONORABLE O. H. SIMPSON,

Governor of the State of Louisiana:

The Commission appointed to frame a Code of Criminal Procedure for the State of Louisiana, in pursuance of the constitutional amendment adopted by the people in 1926 and in obedience to Act 276 of the Legislature of 1926, beg leave to herewith submit the draft of said Code, together with a brief explanation of the plan of the work and of the principal changes we have made in the present laws.

Before beginning our work we examined the Codes of Criminal Procedure prepared for the State of Louisiana by Livingston in 1835, by the Thompson Commission in 1898, and by the Marr Commission in 1910. We also examined the Codes of Criminal Procedure recently adopted by the States of California and Michigan, as well as the codes of many other states.

Our work has resulted more in the nature of a Code than a law treatise. As to the arrangement of the law we, to a great extent, adopted as a model the draft of the Code of Criminal Procedure prepared by the Commission in 1910. Where, in our judgment, the existing law of criminal procedure is satisfactory, we have preserved it in its entirety and in all cases where we have made changes in the law, we have been governed not by a desire to experiment with fads and fancies, but have been guided by the light of the experience of other jurisdictions. The changes that we have made are not novel and all of them have been satisfactorily employed in many jurisdictions. We have conscientiously striven to write a Code of Criminal Procedure that will abolish unnecessary technicalities, expedite the dispatch of business, and as far as possible, eliminate the "law's delay," so that the application of the substantive law to concrete cases will accomplish its ideal purpose, which is a deterrent to the commission of crime. At the same time, we have been careful to safeguard all of the just rights of the defendant.

The following is a partial list of the changes that we have made in the existing law of criminal procedure:

(1) A requirement that the district attorney shall obtain the consent of the court before dismissing a case or entering a nolle prosequi. This is the rule in the United States courts and the practice is being adopted by many of the states as a check upon a too lavish employment of this prerogative.

(2) Permitting the district attorney to issue subpoenas for witnesses to appear before him in aid of his investigations. This is a recommendation made by the District Attorney's Association. District Attorneys of New Orleans for many years, without the aid of a statute, have brought witnesses to their office by means of printed notices, with good results to the administration of justice.

(3) The duties and functions of the coroner have been more clearly defined.

(4) Search warrants may now only be issued in larceny cases and in the enforcement of the prohibition laws. We have broadened their scope to permit searches for counterfeit money, forged instruments, obscene literature, lottery tickets and gambling apparatus or implements.

(5) It is required that bond in a criminal case shall be fixed after taking into consideration the seriousness of the offense and the previous criminal record of the defendant; prohibiting practicing attorneys from going bail; giving the judge authority to refuse to accept as surety upon a bond any person who shall at the time of offering himself be acting as surety on any other bond; requiring each bondsman to make oath to his financial condition and to submit a description of his property, and providing that anyone who shall swear falsely to any material fact set up in his affidavit of justification shall be deemed guilty of perjury.

(6) The qualifications to serve as grand and petit jurors have been re-stated and some of the exemptions from

jury duty have been abolished. The judges of the Criminal District Court for the Parish of Orleans have been given the right to select the jury commissioners, who are now appointed by the Governor. This conforms to the practice in the country parishes and in the United States courts. Fundamentally jury commissioners should be officers of the court and controlled by the judges. Their appointment by the Executive and the absence of judicial control over them, has resulted in abuses tending to demoralize the entire jury system of the City of New Orleans.

(7) Only capital cases are required by the Constitution to be prosecuted on an indictment by a grand jury. We have not required that all other crimes be prosecuted by bill of information, but we recommend that such be the practice in order to eliminate delay and to expedite trials. The powers of the grand jury have been limited to returning a true bill; not a true bill; or pretermitting entirely the matter investigated. Not being a censor of public morals, the right of the grand jury to make reports has been confined to its investigation of certain designated public institutions.

(8) The form of indictments has been simplified. Thus, to illustrate, the form of indictment for murder is:

"Murder—A. B. murdered C. D."

The Codal forms are not exclusive and the pleader may use any other forms authorized by the law of this State. It is thought, however, that the district attorneys will use the simplified form rather than the more complicated existing forms.

(9) The plea of insanity is required to be set up as a separate and special plea and must be filed, tried and disposed of before the trial of the case on the plea of not guilty. No evidence of insanity shall be admissible upon the trial of the plea of not guilty. It is thought that the provisions on this subject will result in determining the issue of insanity vel non before the trial on the merits, thereby mini-

mizing the abuses that often arise from the use of the plea of insanity.

(10) The delay in bringing criminal cases to trial results principally from continuances. To minimize this major element of the law's delay, we have put the matter of continuances within the discretion of the trial judge, not subject to review by any other court, thus fixing definitely the responsibility for the abuse of continuances.

(11) Opening statements are required of the district attorney and of the attorney for the defendant, at his option. Such statements are necessary to explain the nature of the charge and the character of the defense, in order to assist the jury in following the case. They are a fundamental part of the jury system and are employed in the United States Courts, in many of the courts of the several states, and in England.

(12) The examination of jurors on their voir dire has been abolished and in its place we adopted the method now employed in the United States courts, where prospective jurors are examined by the judge alone. This is also the modern practice in England. Experience has shown that this method of selecting a jury is fair both to the State and to the defendant, eliminates delay and shortens the trial. Under the existing system it sometimes requires a week or two to select a jury in a criminal case.

(13) Now the defendant has twice as many peremptory challenges as the State. We have equalized the number of peremptory challenges, giving the State the same number as the defendant.

(14) Tampering with jurors has been made an offense. There are no satisfactory laws dealing with this matter at present.

(15) We have eliminated the law which forbids the district attorney and the judge to discuss and comment on the defendant's failure to testify. This rule came into existence at a time when defendants were not permitted to tes-

tify and, therefore, logically it was proper to prohibit any comment to the jury upon the fact that the defendant had not testified. As a rule only professional criminals with records avail themselves of the privilege of staying off the witness stand.

(16) We have provided that a defendant who testifies in his own behalf and witnesses for the defendant may be cross-examined upon the whole case.

(17) The trial judge has been given the right to instruct the jury both on the law and on the facts and to make just comments on the weight and sufficiency of the evidence and the credibility of the witnesses. The judges of the United States Court exercise this right and so do all of the judges in England and in many of the states of the United States. Judges without such powers are neutral figures, having no real control over the trial of the case.

(18) The trial judge is required to append a per curiam to every bill of exception, unless he shall certify at the foot of the bill that none is necessary.

(19) The following "harmless error" provision:

> "No judgment shall be set aside, or a new trial granted by any appellate court of this State, in any criminal case, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice or constitutes a substantial violation of a constitutional or statutory right."

This provision was originally written by a committee of the American Bar Association and was adopted, as written, by the State of Oklahoma. It has operated satisfactorily in Oklahoma and in other states, minimizing the number of reversals in criminal cases.

(20) Provisions in respect to reporting, tabulating and publishing statistics concerning crime. These provisions were recommended by the National Crime Commission and will undoubtedly result in accurate statistics concerning crime. No intelligent and accurate system now exists in Louisiana.

We have endeavored conscientiously to present a draft of a Code of Criminal Procedure that will expedite and simplify the trial of criminal cases. Not only have we studied methods to protect society against offenders, but we have also attempted in every way to safeguard all of the just and proper rights of the defendant.

All of which is respectfully submitted.

ST. CLAIR ADAMS, Chairman,
HOWARD B. WARREN,
S. R. THOMAS,
Commissioners.

CODE OF CRIMINAL PROCEDURE FOR THE STATE OF LOUISIANA.

TITLE I.

OF THE MODE OF INSTITUTING CRIMINAL PROCEEDINGS.

Art. 1. A criminal proceeding is a prosecution instituted and carried on in the name of the State before a court of criminal jurisdiction for the purpose of bringing to punishment one who has violated a criminal law.

The person injured by the commission of a crime is no party to the criminal proceeding, and his rights are in no wise affected by such proceeding or by the result thereof.

Art. 2. All prosecutions may be by indictment; all prosecutions for offenses not capital may be by information; prosecutions for all misdemeanors may be by affidavit.

Art. 3. An indictment is a written accusation of crime found by a grand jury. The finding must be concurred in by at least nine of the grand jurors and the indictment endorsed a true bill, and that indorsement must be signed by the foreman of the grand jury.

Art. 4. All indictments shall be returned into the District Court, but whenever an indictment has been found for an offense within the trial jurisdiction of any other court, such indictment may be transferred to such other court.

Art. 5. An information is a written accusation of crime made by the district attorney, signed by him and filed either in open court or in the office of the clerk of the court having jurisdiction.

Art. 6. Every affidavit charging crime shall be signed by the affiant and be filed either in court or in the office of the clerk of the court having jurisdiction.

Art. 7. The style of all process shall be "The State of Louisiana;" and all prosecutions shall be carried on in the name and by the authority of the State of Louisiana, and shall conclude: "against the peace and dignity of the same."

TITLE II.

OF THE PRESCRIPTION OF PROSECUTIONS.

Art. 8. No person shall be prosecuted, tried or punished for any offense, murder, arson, rape, robbery, forgery and counterfeiting excepted, unless the indictment, presentment or information for the same be found, exhibited or filed, or unless an affidavit in misdemeanor cases that may be prosecuted by affidavit, be filed within one year after the offense shall have been made known to the judge, district attorney or Grand Jury having jurisdiction; but this prescription shall not apply to prosecution and conviction for a lesser offense under an indictment or information for murder, arson, rape, robbery, forgery or counterfeiting. Nor shall any person be prosecuted for any fine or forfeiture unless the prosecution for the same shall be instituted within six months of the time of incurring such fine or forfeiture.

Provided, that in all criminal prosecutions an indictment or presentment found or exhibited, or an information filed, or an affidavit filed where prosecution may be by affidavit, before the above prescription has accrued, shall have the effect of interrupting such prescription; and if any such indictment, presentment, information or affidavit be quashed, annulled or set aside, or a nolle prosequi be entered, prescription of one year and six months, respectively, as above provided, shall begin to run against another indictment, information or affidavit based on the same facts, only from the time that said original indictment, presentment, information or affidavit was quashed, set aside, annulled or nolle prosequied.

In felony cases when six years elapse from the date of finding an indictment, or filing an information, and in all other cases when two years elapse from the date of finding an indictment, or filing an information or affidavit, it shall be the duty of the district attorney to enter a nolle prosequi if the accused has not been tried.

Nothing in this Article shall apply or extend to an accused person who has absconded, or who is a fugitive from justice, or who has escaped trial through dilatory pleas, or continuances obtained by him or in his behalf.

Art. 9. Whenever it shall have been established to the satisfaction of any court in which any criminal prosecution shall be pending that the prescriptive periods as herein provided have elapsed since the last date upon which any steps shall have been taken by the State in such prosecution, and that the district attorney has not entered his nolle prosequi, the court shall order the dismissal of said prosecution, and the same shall not thereafter be revived; provided, that the prescription established in Article 8 hereof shall be interrupted by the absence of the defendant from the jurisdiction of said court without the written consent of the court first obtained and entered upon the minutes, or filed in the record of the cause; provided, further, that the burden of proving the accruing of the prescription herein established shall in all cases rest upon the person alleging the same.

TITLE III.

OF COURTS OF CRIMINAL JURISDICTION.

CHAPTER 1.

OF CERTAIN POWERS VESTED IN ALL COURTS.

Art. 10 The various courts and persons of this State now having jurisdiction and powers over criminal cases, shall have such jurisdiction and powers as are now conferred upon them by law, except as such jurisdiction and powers may be hereinafter repealed, enlarged or modified.

Art. 11. Every court has the inherent power to enforce the orders which it has power to render, and it is the inherent duty of every judge to see that the proceedings in the court in which he presides shall be carried on decently, with dignity and in an orderly manner; hence every court has authority to issue such writs and orders as may be necessary or proper in aid of the jurisdiction conferred upon it, and to punish, as being a contempt, every interference with or disobedience of its process or orders, as well as every act interrupting or tending to interrupt its proceedings, or impairing the respect due to its authority. Failure to appear for arraignment or trial on the day fixed therefor, after notice, shall be considered a contempt of the court's authority; provided that no one shall be punished for any contempt committed outside of the presence or hearing of the court, except after hearing upon a rule to show cause why he should not be punished for such contempt, served upon him at least twenty-four hours before such hearing.

Art. 12. Justices of the peace and judges of Municipal Courts shall have power to punish each contempt of their authority by a fine of not more than ten dollars, or by an imprisonment of not more than three days, or both; judges of all other courts shall have power to punish each contempt of their authority by a fine of not more than one hundred dollars or by imprisonment of not more than ten days, or both.

Art. 13. All trials shall take place in the parish in which the offense shall have been committed, unless the venue be changed.

Art. 14. Whenever any river, bayou, or lake is the boundary of any parish, the jurisdiction of the courts of such parish shall extend to the middle of such river, bayou or lake, and said courts shall have cognizance of all crimes committed within such boundary.

Art 15. Any offense committed on the boundary line of two parishes, or within one hundred feet of the dividing line between them, may be alleged in the indictment to have

been committed, and may be prosecuted and punished, in either parish.

Art. 16. Whenever any court of record having criminal jurisdiction shall take jurisdiction or have pending before it any trial or cause arising out of the commission of an offense at, on or near the boundary line of the jurisdiction of said court, the jurisdiction of said court shall not be questioned, after the swearing of the jury or the beginning of the trial.

Art. 17. If any mortal wound shall be given, or other violence or injury shall be inflicted or poison administered on the high seas, or in any other navigable waters, or on land, without the limits of this State, by means whereof death shall ensue in any parish thereof, such offense may be prosecuted and punished in the parish where such death shall have ensued.

TITLE IV.

OF DISTRICT ATTORNEYS AND THE ATTORNEY GENERAL.

Art. 18. The District Attorney shall have entire charge and control of every criminal prosecution instituted or pending in any parish wherein he is district attorney, and shall determine whom, when and how he shall prosecute; provided, that every district attorney shall have the right to employ or to accept the assistance in the conduct of any criminal case of such counsel as to him may seem fit.

Art. 19. The District Attorney is the representative of the public and the legal adviser of the grand jury. Whenever required by the grand jury, it shall be the duty of the district attorney of the parish to attend them for the purpose of examining witnesses in their presence or of giving them advice upon any legal matter.

Art. 20 The District Attorney shall be allowed at all times to appear before the grand jury for the purpose of giving any information relative to any matter cognizable

by them; but no district attorney or other person shall be present during the deliberations of the grand jury on their findings.

Art. 21. It shall not hereafter be lawful for any prosecuting attorney to enter a nolle prosequi upon any indictment or information, or in any other way to discontinue or abandon the same, without the leave of the court having jurisdiction.

Art. 22. It shall be unlawful for any district attorney to defend or assist in the defense of any person charged with crime in any parish of this State.

Art. 23. It shall not be lawful for the law partner or partners of any district attorney to be directly or indirectly engaged or interested in the defense of any person or persons charged with any offense, when it is the duty of such district attorney, in his official capacity, to prosecute such person or persons.

Art. 24. The District Attorney may cause subpoenas to issue for witnesses to appear before him at any point in any parish where a crime under investigation is charged to have been committed, and such witnesses are required to give testimony concerning the matter under investigation in the same manner and subject to the same penalties as when appearing before a grand jury.

Art. 25 Whenever a District Attorney desires to subpoena witnesses as provided for in the preceding Article, he shall address a petition to the District Court setting forth that an affidavit has been made against a party or parties charged with a violation of law; that an investigation of the facts appertaining to said charge is necessary, and that the subpoenaing of witnesses for that purpose is in the interest of justice. Thereupon the judge of the District Court shall order the clerk of court to issue subpoenas for such witnesses as the District Attorney may name. The failure of such witness or witnesses to either appear or give testimony shall be punishable as in case of contempt of court. The District Attorney is hereby authorized to administer oaths to such witnesses, in form similar to that administered when witnesses are testifying in court.

Art. 26. Each district attorney in every criminal case in which an appeal shall have been taken from his district or parish to the Supreme Court, or in which the supervisory jurisdiction of that court shall have been invoked, shall prepare and forward a brief to the Attorney General for his revision and use in the Supreme Court.

Art. 27. The Attorney General and his assistants shall have power and authority to institute and prosecute, or to intervene in any proceeding, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the State; and furthermore, the Attorney General shall exercise supervision over all of the District Attorneys throughout the State and shall represent the State in criminal cases on appeal.

Art. 28. Each district attorney shall, on or before the thirty-first day of January of each year, make a written report to the Attorney General, covering the last preceding calendar year, setting forth the number of persons prosecuted in the several parishes within his district, the number of convictions, the nature of the crimes for which prosecutions were instituted, the nature of the crimes the prosecutions of which resulted in convictions, the number of acquittals and the causes of all acquittals which have resulted from a defect of legislation, accompanied by such observations on the criminal jurisprudence of the State, as his experience shall warrant and require.

Art. 29 The Attorney General shall consult with and advise the District Attorneys in all matters appertaining to the duties of their office, and shall make and submit to the Legislature, at the commencement of each regular session, a report of all the official business done by him since the last preceding report by the Attorney General, specifying the suits and prosecutions in which he may have attended; the number of persons prosecuted; the crimes for which, and the parishes where, such prosecutions were had; the results thereof and the punishment therefor; and this report shall be in addition to the reports provided for in Title 32 of this Code.

TITLE V.

OF CLERKS, SHERIFFS, CONSTABLES AND MARSHALS.

Art. 30. The clerks, sheriffs, constables, marshals and stenographers and all other officers of the several courts shall have such powers and perform such duties as are now conferred upon them by law, except as such powers and duties may be hereinafter repealed, enlarged or modified.

TITLE VI.

OF THE PREVENTION OF CRIME.

OF SECURITY TO KEEP THE PEACE.

Art. 31. Every judge shall have the power in all cases in which it shall appear to him by the oath of a credible person that a breach of the peace has been committed, or that there is just cause to apprehend that a breach of the peace is intended, to cause the person charged with such breach or with such intention to be brought before him, and to direct that such person give such security as to the judge may seem reasonable to keep the peace of the State, and to answer to the offense if any has been committed; and in case of refusal to give such security he shall commit such person to the custody of the sheriff, who shall thereupon imprison such person until he shall enter into such security as has been ordered before the same or some other judge; provided that in no peace bond case shall any fees or costs be taxable either against the parish, the complainant or the person placed under peace bond.

TITLE VII.

OF THE CORONER.

Art. 32. The Coroner shall, on being informed of the violent death of any person within the parish, immediately proceed to view the body and to make all proper inquiries respecting the cause and manner of death; and if, from such inquiry, he shall be satisfied that no person has been guilty of causing the death, and that there are no suspicious circumstances attending it, he shall deliver the body to the friends for burial, or shall himself cause it to be buried. But if he shall have just cause to believe that the deceased person came to his or her death by means of poison or violence, or in consequence of any criminal act, and that a post mortem examination of the body is necessary or will materially aid in the prosecution of any person charged or who may be charged with any criminal act, resulting in the death of such person, it shall be the duty of the coroner forthwith to proceed to the place where such body is lying or is buried, and to disinter and remove the body to some convenient and suitable place in the parish or city where such body was lying or buried, for the purpose of holding an inquest over the same.

Art. 33. As soon as the inquest shall have been completed as provided for in the preceding article, the Coroner shall at once cause the body to be removed to the place or the custody from which he received the same, or cause the body of the deceased person to be reinterred in the same place from which he removed the same.

Art. 34. When inquest is to be held, the coroner shall summon five male citizens residing in the parish to appear before him at the time and place expressed in the summons, then and there, as a coroner's jury, to inquire, upon view of the body of the deceased, when and by what means he came to his death.

Art. 35. When the jurors appear, the coroner, in view of the body, shall administer to them an oath that they

will diligently inquire and true presentment make, on behalf of the State, when and by what means the deceased came to his death; and that they will return a true inquest thereof, according to their knowledge and such evidence as shall be laid before them. If any of the jurors do not appear, the coroner shall summon enough jurors from the bystanders to make up a jury of five members.

Art. 36. The coroner may summon witnesses at such time and place as he shall direct, and may enforce their attendance by attachment. He shall have power to summon the attendance of a competent surgeon or pathologist whenever he shall deem such attendance necessary, and a chemist may be employed in cases affording reasonable ground of suspicion that death has been produced by poison. Any chemist, surgeon or pathologist so employed shall, upon the certificate of the coroner acting in the case, approved by a District Judge, receive such compensation for his or their services as shall be allowed by the Police Jury of the Parish, or by the City of New Orleans, as the case may be, and such expense shall be paid by the Parish Treasurer or by the City Treasurer, as the case may be.

Art. 37. All witnesses examined at any inquest shall be first sworn by the coroner, and their testimony shall be reduced to writing.

Art. 38. The jury, upon inspection of the body and after hearing the testimony of the witnesses and making all needful inquiries, shall sign and deliver to the coroner their inquisition, in which they shall certify when and by what means deceased came to his death, and his name, if it be known, together with all material circumstances attending his death, and if it shall appear that he was feloniously killed, the jurors shall further state who were charged with being guilty, if known, or with being in any manner the cause of his death.

Art. 39. If the jury find that any murder or manslaughter has been committed on the deceased, the coroner shall bind over, by recognizance, such witnesses as he shall think proper to appear and testify at the next court to be held in the parish at which an indictment for such offense

can be found; he shall also, within five days after the inquest, return to the District Court the proces verbal of the inquest, the written evidence, and all recognizances and examinations by him taken, and may commit to the parish jail any witness who shall refuse to recognize in such manner as he shall direct. Upon the trial of the case the proces verbal of the inquest shall be competent evidence of death and of the cause thereof, but not of any other fact.

Art. 40. If any person charged by the inquest with murder or manslaughter shall not be in custody, the coroner shall arrest and conduct him before a committing magistrate having jurisdiction, to be examined and proceeded with according to law, or cause a warrant for his arrest to be issued.

Art. 41. Whenever any money or valuable property shall be found upon the body of an unknown deceased person within this State, it shall be the duty of the coroner holding the inquest over said body, or of any person who shall come into possession of said money or valuable property, to deliver all of said money or valuable property so found to the clerk of the District Court where said body shall be found, or be at the time of death, within ten days after said money or property shall have come into his possession.

Art. 42. It shall be the duty of said Clerk of Court to deposit the same in a bank where Parish funds are deposited and he shall safely keep said money or property for the period of two years from the time of receiving the same, unless the same shall be called for by the heirs or proper representatives of the deceased person, in which case the said money or valuable property shall be delivered to them, but if at the expiration of said two years no demand for the same shall have been made, said Clerk of Court shall sell the same in such manner and after such notice as is required by law for judicial sales and shall within ten days thereafter pay into the State Treasury all the proceeds to be credited to the general fund of the State.

Art. 43. It shall be the duty of any physician and of any person in charge of any hospital or institution, or of

any person who shall have first knowledge of the death of any person who shall have died suddenly, accidentally, violently or as the result of any suspicious circumstances, or without medical attendance within thirty-six hours prior to the hour of death, or in any case of death due to what is commonly known as an abortion, whether self-induced or otherwise, to immediately notify the coroner of the death. It shall be unlawful for any undertaker, embalmer or other person to remove any body from the place where such death occurred, or to prepare same for burial or shipment, without first notifying the coroner and receiving permission to remove the body.

Art. 44. Any person who shall fail to comply with the provisions of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not to exceed one hundred dollars or to be imprisoned in the parish jail for a period not to exceed ninety days, or may be both fined and imprisoned as aforesaid.

TITLE VIII.

OF SEARCH WARRANTS.

Art. 45. Every judge vested with criminal jurisdiction, whether as a trial judge or as a committing magistrate, and every judge vested with jurisdiction to try violators of parochial and municipal ordinances has authority to issue search warrants to be executed within the territorial jurisdiction of the judge issuing such warrants.

Art. 46. The judge may cause a search warrant to issue whenever it shall be made to appear to his satisfaction by the oath of a credible person, that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the person complaining believes that it is concealed in any particular house or place.

Art. 47. Any judge may also, upon like complaint made on oath, issue a search warrant when satisfied that there is reasonable cause, in the following cases, to-wit:

(1) To search for and seize any counterfeit or spurious coin, forged bank notes or other forged instruments, or any tools, machines or materials prepared or provided for making either of them;

(2) To search for and seize any books, pamphlets, ballads, codes, printed papers or other things containing obscene language or obscene prints, pictures, figures or descriptions, manifestly tending to corrupt the morals of youth and intended to be sold, loaned, circulated or distributed, or to be introduced into any family, school or place of education;

(3) To search for and seize lottery tickets, or materials for a lottery, unlawfully made, provided or procured for the purpose of drawing a lottery;

(4) To search for and seize any gaming apparatus or implements used or kept and provided to be used in unlawful gaming, in any gaming house, or in any building, apartment or place resorted to for the purpose of unlawful gaming;

(5) In all cases in which a magistrate or court may issue search warrants under any other law of this state providing for the same.

Art. 48. All search warrants shall be directed to the sheriff or any peace officer of the parish or city, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and the property and things to be searched for, shall be designated and described in the warrant, and to bring such property or other things before the judge issuing the warrant.

Art. 49. The peace officer, in whose hands any warrant shall have been placed, shall forthwith execute the same; provided that, unless the warrant expressly so direct, no search or seizure shall be made during the night time or on Sunday; provided, further, that no search warrant can

be lawfully executed after the expiration of the ninth day after its issuance.

Art. 50. Any peace officer may, in order to execute a search warrant, break open, if necessary, the door or window of any house, or any part of said house, or anything therein, if, after notice of his authority and purpose, he be refused admittance.

Art. 51. Whenever any peace officer shall take property under a warrant he shall give a receipt for the property taken, specifying the same in detail, to the person from whom taken, or in whose possession it shall have been found, or, in the absence of any such person, he shall leave such receipt in the place where he shall have found the property.

Art. 52. When any officer in the execution of a search warrant shall find any stolen or embezzled property, or shall seize any of the other things for which a search warrant is allowed by the provisions of this title, all the property and things so seized shall be safely kept by the direction of the judge, so long as shall be necessary for the purpose of being produced or used as evidence on any trial; and as soon as may be afterwards all such stolen or embezzled property shall be restored to the owner thereof, and all the other things seized by virtue of any such warrant, shall be destroyed under the direction of the judge.

TITLE IX.

OF THE WARRANT OF ARREST.

Art. 53. A warrant of arrest is an order in writing, issued and signed by a competent judge in the name of the State, stating the crime or violation of ordinance charged against the person to be arrested and commanding a peace officer to deliver him to answer to said charge.

Art. 54. The warrant shall specify the name of the person to be arrested, but if it be unknown he may be desig-

nated by any name. The warrant shall be dated and shall set out the official capacity of the judge issuing and signing the same. If the charge be such that the accused is entitled to a preliminary examination, the warrant shall direct that he be brought before the judge having authority to sit as a committing magistrate, otherwise that he be brought before the judge having trial jurisdiction.

Art. 55. Although a warrant of arrest shall be directed to and be executed by a peace officer, it need not be directed to any such officer by name or designation, but may be executed by any peace officer in whose hands the warrant may be at the time of the arrest.

Art. 56. Every judge vested with criminal jurisdiction, whether as a trial judge or as a committing magistrate, and every judge vested with jurisdiction to try violators of parochial or municipal ordinances, has authority to issue a warrant for the arrest of any person found within the State charged with a breach of the peace or with crime, whether such person be charged with the commission of a crime within the State or with being a fugitive from the justice of another State or of a foreign country, and for the arrest of all persons charged with the violation of any ordinance; provided that no warrant of arrest shall issue except upon the indictment by a grand jury, the information of the district attorney, or the affidavit of a credible witness setting out distinctly the charge against the person to be arrested.

Art. 57. Whenever any person shall be accused by the oath of any credible person of any crime, breach of the peace or violation of any parochial or municipal ordinance, the judge before whom the accusation is brought shall receive the complaint and cause a warrant to issue, directing that the accused be arrested and brought before the court of competent jurisdiction.

Art. 58. Every judge, whether of trial or of committing jurisdiction, shall, before issuing the warrant of arrest, require of the person making an affidavit of the commission of any crime or the violation of any ordinance, a statement, to be embodied in the affidavit, specifying to

the best of the knowledge and belief of the affiant, the name and surname of the offender and of the person injured, and the date and place of the offense.

Art. 59. As soon as an indictment shall have been found, or an indictment or an information filed, the presiding judge shall cause a warrant to issue, directing that the accused be arrested and brought before the court of competent jurisdiction.

Art. 60. A warrant of arrest when issued shall remain in effect until executed.

Art. 61. On the tenth day, not a Sunday or legal holiday, after a warrant of arrest shall have been placed in the hands of a peace officer, if the said warrant shall remain unexecuted, the said peace officer shall make a sworn statement, setting out the reasons for the non-execution of the warrant, and shall file said statement in the court precided over by the judge who shall have issued the warrant.

TITLE X.

OF ARREST AND COMMITMENT.

Art. 62. Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person, whether such restraint be imposed by force or result from the voluntary submission of the person arrested to the custody of the one arresting him, but in neither event shall any person be subjected to any more restraint than is necessary for his arrest and detention.

Art. 63. Except as otherwise provided under this title, no arrest can legally be made, except in obedience to a legal warrant.

Art. 64. Any peace officer may, without a warrant, arrest a person—

(a) For the commission of any felony or misdemeanor committed in his presence;

(b) When such person has commtited a felony although not in the presence of the officer;

(c) When a felony in fact has been committed and he has reasonable cause to believe that such person has committed it;

(d) When he has reasonable cause to believe that a felony has been committed and reasonable cause to believe that such person has committed it;

(e) When he has received positive information by written, telegraphic or other authoritative source that another officer holds a warrant for such arrest.

Art. 65. A private person may make an arrest—

(a) For a felony committed in his presence;

(b) When the person to be arrested has committed a felony although not in his presence;

(c) When summoned by any peace officer to assist said officer in making an arrest.

Art. 66. To justify an arrest for any misdemeanor, breach of the peace, or violation of any ordinance committed or attempted in the presence of him making the arrest, said arrest must be made at the time of such commission, or of such attempt, for, except for felony, no one can legally make an arrest, without a warrant, for any thing previously done or attempted in his presence.

Art. 67. An arrest may be made at any time.

Art. 68. Every one must submit peaceably to a lawful arrest, and, if he resists, any person lawfully arresting him may use such force as may be necessary to overcome the resistance.

Art. 69. Any person making a lawful arrest may summon as many persons to his assistance as he may deem necessary.

Art. 70. Whenever any felony shall have been committed, and a warrant shall have been issued for the apprehension of the offender, and the peace officers of the parish to whom such warrant shall have been entrusted for execution, shall fail to arrest the accused within a reasonable time, upon such facts being made known to the Governor, by the affidavit of any credible person, the Governor

may issue his order to any peace officer within the State directing him to execute such warrant, by the arrest of the accused wherever he may be found. Upon arrest, the accused shall be taken before the committing magistrate of the parish in which the offense shall have been committed having jurisdiction, to be examined and dealt with according to law; and the district attorney of the district in which such parish is situated shall be notified and required by the examining judge to attend upon the date fixed for such examination and to represent the State.

Art. 71. The peace officer directed to make an arrest, in accordance with the requirements of the preceding article, shall be responsible for the safe-keeping of the prisoner until the sentence of the examining court is complied with, and he shall have the use of any jail in this State to enable him to do so; provided, that after sentence of the examining court, if the accused is required to be kept in jail, the jail of the parish in which the offense shall have been committed shall be used therefor, unless it be unsafe, or there be none in such parish; then any other safe jail may be used.

Art. 72. Any person making an arrest shall take from the person arrested, all offensive weapons or incriminating articles which he may have about his person and must deliver them to the sheriff of the parish, chief of police of the city or to the magistrate before whom he is taken.

Art. 73. Where an arrest is made under a warrant, it shall not be necessary for the arresting officer personally to have the warrant in his possession but such officer must, if possible, inform the person arrested that there is a warrant for his arrest and, after the arrest is made, shall show such person said warrant if required, as soon as practicable.

Art. 74. When arresting a person, without a warrant, the officer making the arrest shall inform the person arrested of his authority and the cause of the arrest, except when the person arrested is engaged in the commission of a criminal offense, or if he flees or if he forcibly resists arrest before the officer has time to inform him. The return of the officer making the arrest, endorsed upon the

warrant upon which the accused person shall be subsequently held, affirming compliance with the provisions herein, shall be prima facie evidence of the fact in the trial of any criminal cause.

Art. 75. A private person, before making an arrest, shall inform the person to be arrested of the intention to arrest him and the cause of the arrest, except when he is then engaged in the commission of a criminal offense, or if he flees or forcibly resists arrest before the person making the arrest has opportunity so to inform him.

Art. 76. To make an arrest, a private person, if the offense be a felony committed in his presence, or a peace officer with a warrant or in cases of felony when authorized without a warrant, may break open an inner or outer door of any building in which the person to be arrested is or is reasonably believed to be if, after he has announced his purpose, he is refused admittance.

Art. 77. A peace officer or private person who has lawfully entered a building for the purpose of making an arrest, may break open a door or window of the building if detained therein, when necessary for the purpose of liberating himself and an officer may also do the same when necessary for the purpose of liberating a person who lawfully entered the building for the purpose of making an arrest and is detained therein.

Art. 78. If a person lawfully arrested escape or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place within the state without a warrant.

Art. 79. To retake the person escaping or rescued, the person pursuing may use the same means to retake as are authorized for an arrest.

Art. 80. When a private person shall have made an arrest he shall, without unnecessary delay, turn the prisoner over to a peace officer.

Art. 81. Every peace officer making an arrest or who shall have turned over to him any person arrested by a private person, shall immediately conduct the person arrested to the nearest jail or police station and then and there cause

him to be booked, that is to say, shall cause to be entered on the book to be kept for that purpose the name of the prisoner and the crime or violation of ordinance charged against him and for which he shall have been arrested. Said book shall always be kept open for the inspection of the public, and the officer in charge shall furnish without cost a certified copy of the entry thereon to any person desiring such copy.

Art. 82. The judges and other magistrates of all courts having criminal jurisdiction throughout the State, are hereby vested with jurisdiction over any person arrested for any crime or for the violation of any ordinance under and within their respective jurisdictions, from the moment said person is arrested and taken into custody by any peace officer, with power and authority to immediately release on bail such person so arrested over whom they have jurisdiction as aforesaid, provided the offense charged be bailable.

Art. 83. When a peace officer shall have made an arrest with a warrant, he shall, after the prisoner shall have been booked, bring him, without unnecessary delay, before the judge designated in the warrant.

Art. 84. When any person shall have been arrested without a warrant, the peace officer, after he shall have caused him to be booked, shall bring him, without unnecessary delay, if the charge be such as to entitle the accused to a preliminary examination, before the judge having authority to sit as a committing magistrate in the case, otherwise, before the judge having trial jurisdiction thereof.

Art. 85. As soon as the person arrested without a warrant shall have been brought before the judge, the judge shall, unless an affidavit be then made setting forth the charge against the prisoner, order him forthwith to be discharged from custody.

Art. 86. When the person arrested, with or without a warrant, shall be brought before the judge, the judge shall remand him for preliminary examination, if the accused be entitled to such examination, otherwise for trial, and shall, if the charge be bailable, order the release of the

accused upon such bail as the judge shall then and there fix; if the said bail be not furnished or if the crime charged be capital, the judge shall commit the accused to prison until delivered in due course of law; provided, that every commitment shall be signed by the judge, shall substantially set out the offense of which the accused is charged, and, if the offense be bailable, shall fix the amount of bail; provided, further that whenever any person shall have been arrested on a warrant, issued by a judge of a parish in which such person shall be found, but not the parish in which the crime shall have been committed, the judge shall, if of the opinion that said accused ought to be put on trial for the alleged crime, commit him to prison until he shall have given bail or been transferred to the parish where the crime is alleged to have been committed, provided that no person awaiting transfer shall be detained in custody in the parish in which arrested for a longer period than thirty days; provided, further, that as soon as the affidavit charging the commission of a crime in another parish shall have been made, the judge before whom the said affidavit shall have been made shall forthwith notify the district attorney of the parish in which said crime shall have been alleged to have been committed.

Art. 87. Electors shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance on elections, and in going to and returning from the same.

Art. 88. The members of the Legislature shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same.

TITLE XI.

OF BAIL AND ITS FORFEITURE.

CHAPTER 1.

OF BAIL.

Art. 89. No person charged with a capital offense shall be admitted to bail if the proof of his guilt is evident, or the presumption is great, or after conviction of a felony; provided that where a minimum sentence of less than three years at hard labor is actually imposed, bail shall be allowed pending appeal and until final judgment.

Art. 90. In all other cases the person accused shall be entitled to bail. The amount of the recognizance shall be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability or improbability of his appearing at the trial of the cause.

Art. 91. Whenever it shall have been shown to the satisfaction of the Judge that the bail fixed is either excessive or inadequate, he shall issue an order decreasing or increasing the amount of the bail, as, in his opinion, the circumstances of the case may require.

Art. 92. No practicing attorney or counselor shall become security or bail for the appearance of any person charged with a felony or a misdemeanor in any criminal cause and any such surety or bail shall be void.

Art. 93. Any Judge shall have authority, in his discretion, to refuse to accept as surety upon a bond, any person who shall, at the time of so offering himself, be acting as surety on any other bond pending in his court.

Art. 94. Any contract made to indemnify any surety against loss on any bail-bond made or to be made by such surety shall be void and any security deposited in connection with such contract shall be forfeited to the State; provided, that this Article shall not apply to surety companies legally authorized to do business in the State.

Art. 95. The order admitting to bail may issue on the judge's own motion; it must be in writing, it must fix the amount of the bail-bond, designate the officer authorized to accept the sureties tendered by the person to be bailed and must be signed by the judge of the court before which it is the legal duty of the person to be bailed to appear; provided that whenever a committing magistrate shall commit any accused to the District Court for trial, or shall bind over any one to appear before the District Court as a witness, such committing magistrate is authorized to fix the amount of the bail-bond for the appearance of such accused or of such witness before the district court at such time as it shall be the legal duty of such accused or of such witness to appear, nor shall any other or additional bail be required in the District Court, unless the judge of such court shall deem other or additional bail necessary.

Art. 96. The order admitting to bail is a special order, and the amount of bail must be specially fixed in each case, hence any general order authorizing the sheriff, or other officers, to take bail and fixing the amount thereof at a certain sum for particular crimes is illegal, and any bail-bond taken under such an order is of no effect.

Art. 97. Every bail-bond shall be made in favor of the State of Louisiana.

Art. 98. Whenever in a bailable case a person shall have been refused bail or the bail demanded be excessive, such person, if the possible penalty for the crime charged be such that the Supreme Court may have appellate jurisdiction, shall have the right to have issued out of the Supreme Court, or by any Justice thereof, under its original jurisdiction, a writ of habeas corpus, to the end that he may be released on such bail as the Supreme Court shall fix; if the possible penalty for the crime charged be such that the Supreme Court can in no event have appellate jurisdiction, such person shall have the right to have issued out of the Supreme Court, or by any Justice thereof, under its supervisory jurisdiction, a writ of certiorari, to the end that it may be ascertained whether the refusal to admit to bail is illegal or whether the bail demanded is excessive, and if

said writ be made peremptory, the Supreme Court shall fix the amount of bail; provided that all writs of habeas corpus and of certiorari issued under the provisions of this Article shall, in the City of New Orleans, be returnable within twelve hours after service, and in the rest of the State within such time as the Justice signing the writ may deem reasonable, but within three days after service.

Art. 99. Whenever any person shall be arrested or confined on the charge of having committed any bailable offense, he may be admitted to bail on the bond of sureties residing in any other parish of the State.

Art. 100. In such cases the bail-bond shall be signed and executed by the sureties before the district judge of the parish or district in which they reside, who shall certify the sufficiency of the bail at the foot of the bond. It shall be made returnable to the court before which the accused is ordered to appear, and all proceedings thereon shall be had in the same court.

Art. 101. In any criminal cause, or in any proceeding where bond or bail of any character is required or permitted for any purpose, the party or parties required or permitted to furnish such bail or bond may deposit, in lieu thereof, cash, certified check on any state or national bank in this State, obligations of the United States Government negotiable by delivery, or bonds of the State of Louisiana, or of any subdivision thereof negotiable by delivery, equal in amount to the amount of the bond or bail so required or permitted and such cash, check or security shall be deposited in the hands of the officer designated in the order to accept said bond or bail.

Art. 102. The officer designated to accept said bail or bond shall accept such cash, check or security and deliver to the depositor thereof a receipt in duplicate, reciting the fact and purpose of such deposit; the filing of such duplicate receipt in the court in which such bond or bail is required or permitted to be filed, shall have the same effect as the furnishing of such bond or bail and shall be taken and given effect by such court and its officers in lieu of such bond or bail.

Art. 103. If such bond or bail be forfeited, the court shall enter an order upon its records directing the disposition of such check, cash or security, and the officer with whom said deposit was made, upon presentation of a certified copy of such order, shall make disposition thereof in accordance therewith.

If such bond or bail be discharged, the court shall enter an order to that effect with a statement of the amount to be returned to the depositor. Upon presentation of a certified copy of such order, the officer having such cash, check or security in his possession shall pay or deliver the same to the person named therein or to his order.

Art. 104. Cash, checks or securities deposited hereunder shall not be subject to garnishment or attachment. No assignment thereof shall be valid unless it be in writing, signed by the depositor, before two witnesses, acknowledged before an officer having authority to take the acknowledgment of deeds, and specifically stating the desired disposition of the whole of the deposit. An assignment made before the order of the court directing the disposition of such cash, check or security shall be contingent upon the discharge of the same and shall not be valid or effective unless and until it is filed with the court having jurisdiction to discharge the bond or bail. No assignment made after the order of the court discharging such bail or bond shall be valid unless it is endorsed upon or attached to the certified copy of the discharge order presented to the officer having custody of the cash, check or security. In case one or more assignments be filed with the court before the order discharging the bail or bond, the court shall, in the order, determine the persons to whom such cash shall be paid or securities delivered.

Art. 105. Any cash or securities received by any officer under the provisions of this chapter shall be deposited in a special fund or place of deposit subject to the order of the proper court. When bonds or other securities are deposited the interest coupons shall not be detached therefrom but shall follow the disposition of the securities.

Art. 106. Any person, firm or corporation availing himself or itself of the provisions of this chapter may, at any time before forfeiture of the same, redeem any cash or securities so deposited by substituting the bond originally required or permitted.

Art. 107. No person shall be permitted to sign any bond required by law who shall not swear that after the payment of all of his debts he is owner in his own right of property, real or personal or both, liable to seizure, in an amount equal to that named in said bond, provided that in no case shall such oath or statement be required of any person discharged on his own recognizance, and provided, further, that the person required or permitted to sign any bond may furnish as surety any surety company authorized to do business in the State of Louisiana.

Art. 108. Every officer authorized to accept any bond shall have authority to administer any oath required by law to be taken by the person signing such bond; any surety who shall swear falsely to any of the material facts set up in his affidavit of justification shall be deemed guilty of perjury and upon conviction thereof, shall be punished in accordance with the law in such case made and provided.

Art. 109. At the time at which any person shall sign any appearance bond he shall also be required to write under his signature the situation of the house in which he makes his domicile, in which house his domicile shall be conclusively presumed to continue for every purpose connected with said bond, or growing out of his signing the same, or for the service of any process or notice issued out of the court in which said bond shall have been given, until he shall have filed in said court a declaration in writing of the situation of the house in which he shall make his new domicile. And no change of domicile shall be pleadable by any person signing any appearance bond, unless said declaration of change shall have been filed as herein above provided for.

Art. 110. In all cases in which, under the provisions of this chapter, any person shall be required to sign his name or to make any declaration in writing, if such person

shall swear that he cannot sign or write, the officer authorized to receive such signature or such declaration in writing may, at the request of such person, sign for him or make for him such declaration in writing, with the same binding effect as if such person had himself signed or himself made the declaration in writing; provided that such declaration and signature shall be witnessed by at least two competent witnesses who shall sign the declaration as such.

CHAPTER 2.

OF THE FORFEITURE AND COLLECTION OF APPEARANCE BONDS.

Art. 111. All bonds taken to secure the appearance of any person before any city court or at any preliminary examination, or before any juvenile court, shall be forfeited and collected as follows:

If at the time fixed for the appearance of any person before any city court or at any preliminininary examination, or before any juvenile court, such person shall fail to appear, the judge shall enter up judgment decreeing the forfeiture of the bond and against the principal and his sureties in solido for the full amount thereof, and shall, within twenty-four hours after the rendition of said judgment, unless the same shall have been paid, cause the same to be recorded in the mortgage office of the parish in which said bond shall have been forfeited, and may, at any time, cause said judgment to be recorded in every parish in which he shall think such recordation proper, and every recordation of said judgment shall be without cost and shall operate as a judicial mortgage against both the principal and his sureties. If said judgment shall not have been paid, it shall be the duty of the judge, at the expiration of the time allowed by law for the taking of an appeal, to cause to issue a fieri facias against both the principal and his sureties. Provided, that said judgment of forfeiture shall be set aside if, at any time before the collection of the same, the principal shall have personally appeared and the trial or preliminary examination for which he shall have given bond to appear

shall have been actually held; provided, further, that it shall be within the sound discretion of the judge, for adequate cause shown, to continue any trial or preliminary examination to a date fixed by him.

A suspensive appeal may be taken, as hereinafter provided, at any time within ten days after the judgment of forfeiture shall have been rendered. If the bond shall have been given in a case in which a felony shall have been charged, that appeal shall be to the Supreme Court; if in a case in which a misdemeanor shall have been charged, to the District Court having criminal jurisdiction; provided that no appeal shall be allowed from the forfeiture of an appearance bond given in a misdemeanor case tried before a District Court sitting as a committing magistrate, but the legality of such forfeiture may be inquired into under the supervisory powers of the Supreme Court.

Art. 112. All bonds taken to secure the appearance of any person before any District Court, otherwise than at a preliminary examination, shall be forfeited and collected as follows:

If, at the time fixed for appearance, such person should fail to appear and answer when called, the judge shall, on motion of the district attorney, forthwith enter up judgment decreeing the forfeiture of the bond and against such person and his sureties in solido for the full amount thereof.

If within twenty-four hours after the rendition, under the provisions of this article, of any judgment forfeiting any appearance-bond, said judgment shall not have been paid, the district attorney shall cause said judgment to be recorded in the mortgage office, of the parish in which said bond shall have been forfeited, and may, at any time, cause said judgment to be recorded in every parish in which he shall think such recordation proper, and every recordation of said judgment shall be without cost and shall operate as a judicial mortgage against both the principal and his sureties. If said judgment shall not have been paid, it shall be the duty of the district attorney, at the expiration of the time allowed by law for the taking of an appeal, to

cause to issue a fieri facias against both the principal and his sureties.

Any judgment forfeiting an appearance bond rendered under the provisions of this article may, at any time within five days after rendition, be set aside upon the appearance, and trial and conviction or acquittal of the defendant, or upon a continuance granted upon motion of the district attorney after such appearance.

Art. 113. No judgment decreeing the forfeiture of the appearance bond shall be rendered in case it shall be made to appear to the satisfaction of the court by the sworn statement of a reputable physician that the principal in such bond is prevented from attending by some physical disability.

Art. 114. The appearance and answer of the accused, upon call made as provided for in the preceding articles, shall not operate as a discharge or release of any surety from his responsibility until the final trial and conviction or acquittal of such accused. Any surety may, prior to the forfeiture of the bond upon which he is surety, be relieved from responsibility by making a formal surrender of the accused to the sheriff or his deputy, in open court, or within the four walls of the prison of the parish, and not otherwise.

Art. 115. The term "appearance bond" shall be taken and intended to mean every bail bond, recognizance or other obligation, or deposit of money made or taken to secure the appearance of any person before any court, but in all cases where money, checks or negotiable securities have been deposited in lieu of bail or bond, in case of discharge or forfeiture, the same shall be disposed of as otherwise provided in this Code.

Art. 116. Every judgment decreeing the forfeiture of any appearance bond, and every mortgage resulting from the recordation of such judgment, shall be prescribed by the lapse of ten years from the rendition of such judgment; provided, however, that the district attorney or any party in interest may have such judgment revived at any time before it is prescribed by taking, in the court which ren-

dered said judgment, a rule upon the persons against whom said judgment was rendered, to show cause why the same should not be revived, and unless, upon the trial of said rule, such cause be shown, said judgment shall be revived.

Any judgment revived as above provided shall continue in full force for ten years from the date of the order of court reviving the same, and any such judgment may be revived as often as the district attorney or any party interested may desire.

TITLE XII.

OF HABEAS CORPUS.

Art. 117. The writ of habeas corpus is an order in writing, issued in the name of the State, by a judge of competent jurisdiction, and directed to the person who has another in his custody, or detains him in confinement, commanding him to bring before the judge the person thus detained, at the time and place appointed in the writ, and to state the reason for which he thus keeps him imprisoned and deprived of liberty.

Art. 118. The writ of habeas corpus may be issued: by the Supreme Court or by any justice thereof at the instance of any person in actual custody, in any case when that court may have appellate jurisdiction and by the district judges, at the instance of any person in actual custody in their respective districts; provided, that neither the Supreme Court nor any justice thereof, except in cases provided for in Articles 98 and 120, shall issue said writ unless every district judge of criminal jurisdiction in the district in which the relator is in custody be absent, recused or prevented from some cause from acting, and unless such absence, recusation or disability be made to appear by oath of the relator or by other sufficient proof.

Art. 119. Whenever in any bailable case the district judge shall have refused any person bail, or shall have de-

manded of him excessive bail, such person shall have the right, subject to the provisions of Article 98, to have issued by the Supreme Court, or by any justice thereof, a writ of habeas corpus.

Art. 120. Whenever any person shall have been sentenced by a district judge to an illegal imprisonment, such person shall have the right, subject to the provisions of Article 141, to have issued by the Supreme Court, or any justice thereof, a writ of habeas corpus.

Art. 121. Every application for a writ of habeas corpus shall be by petition in writing addressed to a competent court or judge and in the name of the State of Louisiana on the relation of the person in custody. The petition shall be signed by the relator or by some other person in his name and behalf, and shall state, in substance, that the relator is imprisoned, or deprived of his liberty, and by whom, if the person's name be known, or, if not known by designating or describing him, so far as possible, and shall conclude by praying for the issuance of a writ of habeas corpus. The relator or the person who shall have signed the petition in his name and behalf shall swear that the allegations in the petition contained are true to the best of his belief.

Art. 122. If the imprisonment be by virtue of or under pretext of a judicial order, a copy of such order shall be annexed to the petition, or the petition shall allege that a copy of it has been demanded and refused.

Art. 123. If the imprisonment or detention be by virtue of a judicial order, regular in form, but illegally obtained or executed, the petition shall mention in what the illegality consists.

Art. 124. If the imprisonment or detention be not by virtue of a judicial order, the petition need only allege that the applicant is illegally imprisoned or confined.

Art. 125. The competent judge to whom the petition is presented shall immediately grant a writ of habeas corpus, unless it appear by the petition itself, or by the documents annexed to it, that the relator can neither be set at liberty nor admitted to bail.

Art. 126. The writ may be granted in court, with the signature of the clerk and the seal of the court, or out of court under the signature alone of the judge.

Art. 127. The writ may be served by any person capable of giving evidence.

Art. 128. The person into whose hands a writ of habeas corpus shall have been placed for service shall, without delay, serve the same upon the person to whom addressed and notify the district attorney.

Art. 129. Service of the writ may be by the delivery of it to the person to whom it is addressed, or who keeps the relator in confinement; and if he refuse to receive the writ, he who is charged with the service of it shall inform him of its contents. But if the person to whom the writ is addressed conceal himself or refuse admittance to the person charged with the service, the latter shall affix the writ on the exterior of the place where the person confining the relator resides or in which the relator is confined.

Art. 130. The service of the writ and the notification to the district attorney shall be proved by the affidavit of the person directed to serve it.

Art. 131. The person on whom a writ of habeas corpus shall have been served, whether it be directed to him or not, shall at the time and place designated in the writ, produce the relator and make a written return to said writ.

Art. 132. The person upon whom a writ of habeas corpus shall have been served shall declare positively in his return:

1. Whether he has or has not the relator in his power or custody, or under his restraint;

2. If he has the relator in his power or custody, or under his restraint, he shall state the authority and cause of such imprisonment or restraint.

Art. 133. If he upon whom the writ is served had the relator in his power or custody, or under his restraint, at any time before the service of the writ, but has transferred such custody or restraint to another, the return must state

particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place.

Art. 134. If the relator be kept in custody by virtue of a judicial order the original of that order shall be annexed to the return.

Art. 135. The return shall be signed by the person making it, and, except when such person is a duly sworn and qualified public officer, and make such return in his official capacity, it must be verified by his oath.

Art. 136. The return shall be made within twelve hours after the service of the writ, or sooner, if so ordered by the writ; provided, that whenever a writ of habeas corpus shall have been granted by the Supreme Court, or by any justice thereof, upon the application of any person held in custody outside of the Parish of Orleans, the return shall be made within three days after the service of the writ or sooner if so ordered by the writ.

Art. 137. Whenever, by reason of the sickness or infirmity of the party confined, he cannot be produced without danger to his life or damage to his health, he who has him in confinement shall mention that fact in his return; and if this fact be proved by the affidavit and certificate of a physician or surgeon regularly authorized to practice, the judge shall, if the return be otherwise sufficient, proceed to determine upon the habeas corpus in the same manner as if the applicant were produced before him.

Art. 138. At the time and place fixed in the writ for the return thereof, the judge shall proceed summmarily to hear such legal evidence and reasons as may be adduced, as well by the party confined as by the party confining, and shall, after a full and fair hearing, discharge or refuse to discharge the relator from custody, as the justice of the case may require.

Art. 139. At the hearing of the return, the relator shall have the right, by legal evidence, to controvert or disprove any material fact or matter set forth in the return, and to prove any fact showing either that his imprisonment or detention is unlawful or that he is entitled to his discharge.

Art. 140. If the judge can not pronounce immediately on the habeas corpus, he shall, until the rendition of his judgment, remand the relator to the custody in which he was when the writ was served.

Art. 141. If, after the hearing of the return, it appears that the relator is confined by the order of some court, he can be restored to liberty only in the following cases:

1. Where such court has exceeded its jurisdiction;

2. Where the original imprisonment was lawful, but by some act, omission or event which has since occurred, the relator has become entitled to his liberty;

3. When the order of imprisonment is deficient in some legal requisite;

4. When the order of imprisonment, although legal in form, imposes an illegal imprisonment; provided that whenever any person shall have been sentenced to any imprisonment in excess of the maximum term allowed by law for the offense of which he shall have been convicted, such person shall not, until the expiration of such maximum term, be released upon habeas corpus;

5. When the person having the custody of the relator is not the person allowed by law to detain him;

6. When the imprisonment is not authorized by any order, decree, judgment or sentence of any court, or by any provision of law;

7. When the relator has been committed on a criminal charge without reasonable or probable cause.

Art. 142. The judge pronouncing on the habeas corpus cannot, otherwise than as set out in the article last preceding, examine into the validity of any judgment or decree of a regularly constituted court under which the imprisonment has taken place; and whenever it shall appear to him that there exists sufficient legal ground for the detention of the prisoner, on account of any offense with which he may be charged, although the order of imprisonment may have been rendered in an irregular and unauthorized manner, or have been executed by a person not duly authorized for that purpose, the judge shall render

a new order of arrest, in regular form, directed to the proper officer, or admit the party to bail, if the nature of the offense allows it.

Art. 143. If it shall appear to the judge upon the trial of the return that there is no sufficient legal cause for the arrest or confinement or if he thinks that such confinement cannot legally continue, he shall immediately set the prisoner at liberty.

Art. 144. If the judge shall decide that the prisoner cannot be released from confinement, or admitted to bail, he shall remand him to prison.

Art. 145. A party discharged from imprisonment under a habeas corpus through deficiency of proof of or some defect in the warrant of imprisonment, may be arrested and confined anew, upon satisfactory proof and under a legal warrant, although it be for the same offense.

TITLE XIII.

OF THE RIGHT TO COUNSEL.

Art. 146. The accused in every instance shall have the right to defend himself and to have the assistance of counsel, who shall have free access to him at all reasonable hours.

Art. 147. Whenever an accused charged with a felony shall make affidavit that he is unable to procure or employ counsel learned in the law, the court before whom he shall be tried, or some judge thereof, shall immediately assign to him such counsel; provided, that if the accused is charged with a capital offense, the court shall assign counsel for his defense of at least five (5) years' actual experience at the bar.

TITLE XIV.

OF COMPULSORY PROCESS.

Art. 148. Each side in a criminal case has the right to compulsory process for obtaining its witnesses.

Art. 149. The right to compulsory process is a right to demand subpoenas for the witnesses and a right to have those subpoenas served.

Art. 150. The service of subpoenas, unless otherwise directed by the party ordering the same, shall be either domiciliary or personal. If the service be domiciliary, the subpoena must be left at the place where the witness resides, in the hands of a person apparently over the age of fourteen years and who lives at the domicile of the witness.

Art. 151. A witness who fails to appear in obedience to a subpoena may be attached; provided that no witness who shall have been brought into court by attachment shall be liable to any penalty where it shall appear that the subpoena did not actually come into his hands, or that he had no knowledge of having been summoned.

Art. 152. That side of a criminal case that has taken all legal precautions and used all reasonable diligence to procure its witnesses, is entitled to have service and return made, independently of any question as to what the witnesses would prove.

Art. 153. An officer charged with the service of any subpoena shall make return thereof into the court out of which same shall have issued.

If the service has been personal, the return shall so state; if not personal, the return shall show where the service was made and in whose hands the subpoena was left. If the return be that the witness cannot be found, the officer must set out in his return every fact which, in his opinion, justifies the return.

Art. 154. On the final trial of any criminal case, each side, except as provided in the next succeeding article,

shall be allowed to summon, at the expense of the parish, six witnesses and no more.

Art. 155. Whenever, upon the final trial of any criminal case, either side shall wish to summon, at the expense of the parish, more than six witnesses, the party desiring such additional witnesses shall make to the judge a written application, which, if made by any defendant, shall be sworn to by him or by his counsel, setting out what the applicant expects to prove by each of such additional witnesses, how and why this testimony is material, and that the matters recited in the application cannot be proved except by the additional witnesses; provided that in no event shall more than twenty witnesses on each side be summoned at the expense of the parish, but each side shall have the right to compulsory process for obtaining at its own expense such witnesses as it may deem necessary.

Art. 156. In all prosecutions, witnesses may be compelled to attend the session of the court from any parish of the State, if the prosecuting attorney, or any citizen, or the accused, shall state on oath what it is expected to prove by said witness, and if the judge, upon examination of the case and the affidavit, shall, in his discretion, determine that the attendonce of the witness is indispensable to the trial; and for that purpose the court before which the prosecution is pending may cause to be issued subpoenas and attachments to its officers, as the case may require.

TITLE XV.

OF COMMITTING MAGISTRATES AND PRELIMINARY EXAMINATIONS.

Art. 157. The following named officers, throughout their several territorial jurisdictions, shall have jurisdiction as committing magistrates, with authority to bail or discharge; the judges of the District Courts in all criminal cases; the judges of the several City and Municipal Courts,

in all cases not capital; the justices of the peace, in all cases not capital or necessarily punishable at hard labor.

Art. 158. Either the State or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the District Court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court.

Art. 159. In all preliminary examinations it shall be the duty of the committing magistrate to take down or to have taken down in writing and signed in his presence and in the presence of the accused, or to have taken down and subsequently transcribed by the official stenographer, or a competent stenographer appointed and sworn for the purpose, the depositions of all witnesses on behalf of the State and the accused, and the deposition of the accused, if he testify on his own request; and, in his discretion, to require of witnesses their recognizance or bond in such sum as may be reasonable, conditioned for their appearance before the court having jurisdiction to try the offense, there to give evidence in the case and not depart without leave of the court, which depositions and recognizances or bonds he shall forthwith file in the clerk's office of the court having jurisdiction. He shall also preserve and keep in his custody and control, until commitment for trial, or the discharge by him of the accused, any property, matter or thing of whatsoever description which may be required as evidence upon the trial. In case of commitment of the accused for trial, the committing magistrate shall deliver to the clerk's office of the court having jurisdiction all such property, matters and things as may be required in evidence, together with all property, money and effects taken from the accused, for which a receipt shall be given the accused at the time of taking such property, money or effects; and it shall be the duty of the clerk to receive and keep them safely and securely, subject to the order of the court, taking care

to preserve their identity. The deposition of the accused, given voluntarily as aforesaid, and of any witness, whenever it shall be shown that such witness is dead, absent from the State, cannot be found, or is too ill to testify, certified by the committing magistrate and the official court stenographer, or the stenographer appointed and sworn for the purpose, shall be received in evidence upon the trial of the case or in any subsequent judicial proceeding.

After the examination shall have been thus made, if it shall appear from the evidence that a crime has been committed by the accused, the committing magistrate shall commit him to jail; but if the offense be not capital, the accused shall be set at liberty upon giving bond with approved security in such sum as the committing magistrate shall fix, conditioned upon his appearance before the court having jurisdiction to try the offense, and if he be unable or refuse to give bond, he shall be committed until delivered in due course.

In all cases not capital, in which an accused shall have been committed or bound over for trial, it shall be the duty of the district attorney to forthwith file an information when in his judgment the evidence sent up by the committing magistrate so warrants, it being the intendment of this provision that such cases shall be promptly proceeded with and prosecuted upon information without referring the same to the grand jury.

If upon the preliminary examination it shall not appear that the accused has committed an offense, it shall be the duty of the committing magistrate to discharge him and deliver to him such property, money and effects as shall have been taken from him; but in this case the committing magistrate shall file the evidence taken with the clerk of the District Court.

After the examination shall be thus made, if it shall appear from the testimony of the witnesses that a crime has been committed by the accused, the committing magistrate shall send him to jail under the cutsody of the sheriff or constable.

If the crime charged be not capital the accused shall be set at liberty upon giving bond with approved security for such sum as the committing magistrate shall fix, conditioned upon the appearance of the accused before the District Court; if he be unable or refuse to give bond with such security, the judge shall commit him to prison until he is delivered in due course of law.

Art. 160. Whenever any district judge or district attorney shall be informed that a crime has been committed in his district, and that no complaint or declaration thereof has been made before any committing magistrate, he shall inquire into the fact by causing all persons he shall suppose to have some knowledge of the fact to be summoned before a court of competent jurisdiction, in order that their depositions may be taken.

TITLE XVI.

OF PLACING WITNESSES UNDER BOND, AND OF TAKING THE TESTIMONY OF WITNESSES CONFINED IN DEFAULT OF BOND.

Art. 161. Whenever it shall appear from and upon motion of the district attorney or by the affidavit of any defendant, that the testimony of any witness is essential to the prosecution or the defense, as the case may be, and that there are good grounds to fear that said witness may depart or be taken from the jurisdiction of the court, said witness may be required by the committing magistrate or by the judge of the trial court to give an appearance bond as provided for defendants when admitted to bail that he will remain in the parish until his testimony shall have been given in the cause or dispensed with. In default of furnishing such security, such witness shall, until discharged, be placed and kept under arrest for detention in such suitable place as shall be designated by the court.

Art. 162. When any witness in any criminal case, imprisoned in default of giving bond for his appearance, shall wish to have his testimony taken and to be enlarged, he shall apply to the judge of the court in which such prosecution is pending to have his testimony taken in writing; and thereupon the judge shall order said testimony to be taken in writing before him in court or in chambers or before any officer authorized by law to administer oaths, after giving forty-eight hours personal notice to the accused and to the district attorney to be present at the time and place of the taking of said testimony; provided, that with the consent of the district attorney and of the accused any and all delays for the taking of said testimony may be waived. If the accused is in jail the sheriff shall be notified and shall produce the accused at the time and place designated to be confronted with the witness. The testimony when so taken shall be sworn to and signed by the witness if he knows how to write, if not, by his ordinary mark attested by the officer taking the testimony; and the said testimony so certified to shall be without delay returned by the officer taking the same into the court in which said prosecution is pending, together with the said notice and the officer's return of service annexed thereto, and thereupon the said witness shall be discharged from custody.

The taking of this testimony shall be without expense to the witness, but shall be taxed as a part of the costs of the prosecution.

Art. 163. The testimony taken as provided for in the last preceding article, when certified to by the officer before whom taken, shall, in case of the death or departure of the witness from the parish or other inability to attend court, be admissible before the grand jury as well as on the trial of the accused, subject to all legal objections, but shall not be admissible when the presence of the witness can be procured by subpoena; provided that whenever an accused, not in jail, shall have been duly notified to be present at the taking of said testimony and shall not attend, he shall not be allowed to set up the plea that he had been deprived of his right to be confronted with the witnesses against him.

TITLE XVII.

OF EXTRADITION.

Art. 164. Whenever, by the requisition made by the Governor of another state or territory, any person is to be arrested as a fugitive from justice, the Governor may, in his discretion, issue and direct to any peace officer of the parish in which such fugitive may then be a warrant for the arrest of such fugitive and for the delivery of him to the authorities, designated in the warrant, of such state or territory; provided that the Governor shall not issue his warrant unless the requisition be accompanied by a duly certified copy of a sworn statement of the complainant, of a statement of facts by the prosecuting attorney and of the indictment, information or affidavit pending in the state or territory, from the justice whereof the person to be arrested shall be alleged to have fled, charging the commission of a felony or misdemeanor in such state or territory.

Art. 165. The Governor may direct that any person arrested upon the requisition of the governor of another state or territory be brought before him, or may for cause, by him deemed sufficient, revoke any warrant issued by him.

Art. 166. The officer to whom shall have been directed a warrant by the Governor for the arrest of any fugitive from the justice of another state or territory shall within thirty days from the receipt by him of said warrant make return thereof to the Governor.

Art. 167. Before any officer to whom the Governor's warrant shall have been directed shall deliver into the custody of the authorities of another state or territory any person arrested as a fugitive from justice, such officer shall take such person before a committing magistrate of the parish in which such person shall have been arrested.

Art. 168. When any person arrested as a fugitive from justice shall have been brought before a committing magistrate as required in the last preceding article, the

committing magistrate shall in open court, inform the prisoner of the charge pending against him in the state or territory from which he shall be alleged to be a fugutive from justice, and shall inquire of him whether he does or does not consent to return to said state or territory.

Art. 169. If the prisoner, upon the inquiry of the committing magistrate, shall reply that he consents to return to the state or territory from which he shall be charged to have fled, he shall without further delay be delivered into the custody of the authorities of said state or territory.

Art. 170. If the prisoner, upon the inquiry of the committing magistrate, shall not reply that he consents to return to the State or Territory from which he shall be charged to have fled, the committing magistrate shall assign as early a day as practicable for the hearing, in open court, of the prisoner, provided that at least one full day shall intervene between the day upon which said assignment shall be made and the day assigned.

Art. 171. If, upon the hearing of the prisoner, whether such hearing be before a committing magistrate, or in habeas corpus proceedings, it shall appear, that the copy of the indictment, information or affidavit accompanying the requisition has not been certified to as authentic by the governor of the state or territory out of which the requistion shall have issued, or that the matter, as set out in said copy is fatally defective as a criminal charge under the laws of said state or territory, or that either the requisition or the warrant is defective or improperly executed, or that the prisoner is not the person mentioned in the warrant, requisition and indictment, information or affidavit, or that the prisoner was not in said state or territory at the time of the alleged commission of the felony or misdemeanor charged, unless said felony or misdemeanor be such that actual presence is not essential to its commission, he shall be discharged without delay, otherwise he shall, without further delay, be delivered into the custody of the authorities of said state or territory.

Art. 172. When any person shall be charged on the oath of any credible person, before any committing magis-

trate, with being a fugitive from the justice of any other state or territory, such committing magistrate shall issue his warrant for the arrest of the accused, and if, after a hearing, in open court, the committing magistrate shall be of the opinion that the accused is a fugitive from justice, the accused shall be committed to await extradition, otherwise shall be discharged; provided that if on or before the thirtieth day after any affidavit shall have been made charging any person with being a fugivite from the justice of another state or territory, extradition proceedings shall not have been begun against him in this State, he shall be entitled to be forthwith discharged.

Art. 173. Whenever any person shall have been arrested, whether upon affidavit or upon the Governor's warrant, as a fugitive from justice, such person, unless the crime charged against him be capital in the state or territory from which he shall be alleged to have fled, shall be entitled to be discharged on bail until there be judgment decreeing him a fugitive from the justice of such state or territory.

Art. 174. In all cases in which the district attorney shall have reason to believe that a person charged with a crime committed in his district has fled into any other State or Territory, it shall be his duty to obtain a requisition from the Governor of this State for the apprehension and delivery of such person on the Governor of any other state or territory to which such person may have fled, and to deliver such requisition to the sheriff, who shall proceed to cause the same to be executed according to law.

Art. 175. Whenever a demand shall have been made by the executive of this State on the executive of any other State or Territory for the arrest of any person as a fugitive from the justice of this State, it shall be the duty of the executive of this State to appoint some suitable person to present such demand, and when the executive of the state or territory, on which such demand shall have been made, shall have caused such fugitive from justice to be arrested and secured, the person appointed by the executive of this State to receive such fugitive from justice shall convey him

to and deliver him within the four walls of the jail of the parish in which he is charged to have committed the offense, to the sheriff of such parish, who shall keep him confined in jail until delivered according to law.

All the actual expenses incurred by the person appointed by the executive to receive and convey a fugitive from justice together with five dollars per day for all necessary time employed in such service, shall be paid by the parish in which the offense is charged to have been committed.

TITLE XVIII.

OF GRAND AND PETIT JURIES.

CHAPTER 1.

OF THE QUALIFICATIONS FOR AND EXEMPTIONS FROM JURY SERVICE.

Art. 176. The qualifications to serve as a grand juror or a petit juror in any of the courts of this State shall be as follows:

To be a citizen of this State, not less than twenty-one years of age, a bona fide resident of the parish in and for which the court is holden, for one year next preceding such service, able to read and write the English language, not under interdiction or charged with any offense, or convicted at any time of any felony, provided that there shall be no distinction made on account of race, color or previous condition of servitude; and provided further, that the District Judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or from relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case.

In addition to the foregoing qualifications, jurors shall be persons of well known good character and standing in the community.

Art. 177. In order to secure none but good and competent jurors, the Jury Commissioners shall have authority to apply to any Judge of the District Court, in chambers or in open court, for such legal process as may be necessary to secure the attendance of witnesses, and the production of the papers necessary for their investigation as to the competency of jurors; and any disobedience of the orders of, or hindrance of or interference with any jury commissioner, sheriff, clerk or deputy sheriff or deputy clerk, in the discharge of any duty imposed by this article, shall be punishable as contempt of court.

Art. 178. The following persons shall be exempt from serving as grand or petit jurors, but the exemption shall be personal to them and when they do not themselves claim exemption, it shall not be sufficient cause for challenging any person exempt under the provisions of this article, viz:

First: The members, the officers and the clerks of the Legislature, during the session of the Legislature and in going and returning from the same.

Second: The Governor, Lieutenant Governor, State Auditor, State Treasurer, Secretary of State, Superintendent of Public Education, their clerks and employees and all public officers commissioned under authority of the United States.

Third: Judges and active officers of the several courts of this State, attorneys-at-law, physicians and surgeons actively engaged in the practice of their profession and duly licensed under the laws of this State, professors and school teachers, apothecaries, and all members of paid fire departments.

Fourth: All persons over sixty-five (65) years of age, those who from sickness or other physical infirmity may be incapacitated from rendering such service, and those who have served as grand jurors under the provisions of this article during the previous six months, and those who have served as petit jurors as herein provided, who shall not again be called as jurors until after the expiration of one year from the date of their service.

Fifth: All telegraph and telephone operators and railroad station agents. Also chief engineers of electric and water works systems.

CHAPTER 2.

OF THE DRAWING AND SELECTING OF JURIES, THE PARISH OF ORLEANS EXCEPTED

Art 179. District Judges shall select and appoint in each parish five qualified electors, good men and true, able to read and write the English language, who, with the Clerk of the District Court, or in case of his inability to act for any cause, his chief deputy, as a member thereof ex-officio, shall constitute a Jury Commission for said parish and shall hold their office during the pleasure of the District Judge, provided that no person holding any public office shall be competent to hold the office of Jury Commissioner. The evidence of the appointment of said Jury Commissioners shall be the written order of the District Judge, which order shall be entered upon the minutes of the District Court; and before entering upon the discharge of their duties the persons so appointed members of the commission shall take an oath faithfully to discharge the duties imposed upon them by law, which oath shall be filed in the clerk's office.

Art. 180. Three members of said commission, together with the Clerk of the District Court, shall be a sufficient number to perform the duties of the Jury Commission, provided that all members shall have been notified by the clerk of the District Court of the time and place designated by him for the meeting of the Commission, which notification shall appear from the certificate of the clerk in case of the absence of any member thereof.

Art. 181. Every order for the selecting or drawing of jurors shall be in writing, signed by the judge and spread upon the minutes of the court.

Art. 182. To be competent, any witness to any of the proceedings of any jury commission shall be disinterested, shall be a resident of the parish and not less than twenty-

one years of age, shall be competent to read and write the English language and shall be specially summoned by the clerk as a witness to said proceeding.

Art. 183. At the time ordered by the District Judge, the Jury Commission shall meet at the office of the clerk of the District Court and, in the presence of two or more witnesses, shall select from the persons qualified to serve as jurors for their respective parishes three hundred persons, a list of whom shall be made out by the clerk under the supervision of the commission, and said witnesses. This list shall be the general venire list and shall be kept complete and supplemented from time to time as hereinafter enacted. Each of the names on said list shall be written by the clerk on a separate slip of paper, together with the number of the ward or place of residence of such person, and the slips of paper containing the names selected, except those containing the names of the persons chosen to serve as grand jurors as hereinafter provided, shall be placed in a box which shall be labeled: "General Venire Box."

Art. 184. Immediately after completing the general venire list, the commission shall select therefrom the names of twenty citizens, possessing the qualifications of grand jurors, to be taken from different portions of the parish, as far as practicable, who shall be subject to duty as grand jurors during the term of six months after the grand jury is empanelled and until a succeeding grand jury shall have been empanelled.

The names of the persons so selected shall be written on slips of paper, by the clerk, in the presence of the commissioners and they shall place the slips in an envelope, seal the same and endorse thereon the words: "List of Grand Jurors."

Art. 185. Immediately after the selecting of the list of grand jurors, the remaining slips in the general venire box shall be well mixed, and one of the members of the Jury Commission, in the presence of the others and of the witnesses, shall draw therefrom one at a time the names of thirty persons to serve as petit jurors for the first week of the next ensuing session of the Court, and if, in the judg-

ment of the Commission a jury for another week may be required, or if the District Judge so direct, they shall draw, in the same manner, thirty additional names for service as jurors during the second or any subsequent week of the session; provided that until such persons so drawn shall have actually served as jurors they may be required by the District Judge to perform jury duty any week of the session thereafter ensuing.

Art. 186. The clerk and the Commission shall place the thirty slips first drawn, in an envelope and seal and endorse on the same the words: "List of Jurors No. 1," and the thirty additional names, when drawn, shall be likewise enclosed and sealed, and the words: "List of Jurors No. 2" endorsed thereon. These sealed envelopes, with the one containing the list of grand jurors, shall be placed in a box to be provided for the purpose, labeled "Jury Box," which shall be locked and sealed and placed in the custody of the clerk for use at the next session of the court, subject to the orders of the District Judge, as hereinafter provided.

Art. 187. The clerk shall keep a record of the drawings with a list of all the names in the order they are drawn and showing the week for which they are to serve; and when the drawing and the proces verbal is complete, shall deliver a copy of the same to the sheriff, who shall without delay, proceed to summon all the persons on said list to attend upon the session of the court and to serve for the week for which they are drawn. The clerk shall cause a copy of said list and the list of grand jurors to be published in the official journal of the parish, if there be one, or in some other newspaper published in the parish, or, if there be no official journal or other newspaper in said parish, he shall post a copy of these lists on the door of the Courthouse.

Art. 188. As soon as practicable after the selection by the commission of the list of grand jurors, the grand jury shall be empanelled. The judge shall select from the list of grand jurors a suitable person to act as foreman of the grand jury, and the sheriff, under the direction of the court, shall draw by lot from the envelope endorsed "list of Grand Jurors," the names therein until eleven answer, who, with

said foreman, shall constitute the grand jury. The names remaining in the envelope, after completing the panel of the grand jury, shall be replaced in the jury box, to be drawn from by lot in case any vacancy shall occur thereafter in the membership of that body; provided that should the original list be exhausted before the panel is completed or by the completion of the panel, the judge shall direct the commission to select from the jury list and to withdraw from the general venire box an additional number of names to complete said panel or to fill vacancies that have taken place in the grand jury since exhausting the panel; provided, further, that in the absence of the foreman, the judge shall appoint an acting foreman from the grand jurors present.

Art. 189. The judge may at any time order the drawing of additional jurors and designate the number to be drawn, for the trial of criminal cases at a regular, continuous or special session of court; provided, that said jurors shall be drawn pursuant to the formalities herein provided for the drawing of the regular venire, except that no publication of the list of jurors so drawn need be made.

Art. 190. It shall be the duty of the jury commission at such times as the court may order, to select one hundred tales jurors, good men and true, and place their names in a box known as the tales jury box, securely seal the same and deliver it to the district clerk of the parish, who shall keep the same so sealed and unopened in his possession until ordered by the court to produce the same. If on the trial of any criminal case, the regular venire is exhausted, or it appears that it will be exhausted, before the selection of a jury therein, the court at its discretion may instruct the clerk to open such tales jury box and draw therefrom such number of tales jurors as in its judgment may be necessary to serve on said case, and it shall be the duty of the sheriffs to forthwith summon such tales jurors so summoned to report immediately for jury service in said court in said case; provided, that the names of tales jurors drawn from such tales jury box and who do not serve shall not be returned to said tales jury box by the District Clerk, but the slips upon which the names are written shall be destroyed in the

presence of the court by the District Clerk; and provided, that the jury commission may, at any time, without the order of the court, supplement the names of tales jurors in said tales jury box until the full complement of one hundred is reached. All tales jurors shall possess the same qualifications as provided for regular jurors, but no publication of the tales jury list shall be necessary, but a copy of the same as drawn by the Clerk, shall be furnished to the State and to the defense before the trial shall proceed; the jury commission shall not make known in any manner the names placed in said tales jury box, and should any of them do so, he shall be held in contempt of court and punished accordingly; but nothing herein contained shall be so construed as to limit the right of the judge in criminal cases by and with the consent of the District Attorney and the defendant, or his counsel, after the list of regular jurors is exhausted, to order the summoning of talesmen from among the bystanders or persons in proximity of the court house, or from any portion of the parish, which the judge may designate.

Art. 191. If the jury drawn for any week of the session do not serve as jurors during that week, they may be required to serve during a subsequent week of any session of the court until another venire shall have been drawn by the commission, unless sooner discharged by the district judge; provided, that whenever the jury has been empanelled in any case, and the trial been commenced, if the week for which the jury is drawn expires, such jurors shall continue to serve in the cause in which they are empanelled, until a verdict is rendered or they are discharged by the court.

Art. 192. Not less than once in every six months, computing the time from the date of the first drawing by the jury commission, the jury commission shall meet at the clerk's office and after being furnished by the clerk with a list of those who have served as regular jurors since the previous drawing of the general venire, shall in the presence of not less than two witnesses, examine the original venire list and strike therefrom and take from the general venire box the names of those who have served, who are known to

have died, removed from the parish, become exempt or disqualified to serve as jurors, since their names were entered on the list. The commission shall then supplement the original list and the slips in the box with the names of the same number of good and competent men from the qualified jurors of the parish, as have been taken from the box and erased from the list, so as to keep the number of names in the general venire box and on the jury list at the original standard of three hundred. The clerk of the district court at each meeting of the commission shall make a proces verbal of its acts in detail and record the same in a book to be provided for the purpose by the police jury, which shall at all times be open to the inspection of the public. Said proces verbal shall be signed by the clerk of court, the members of the commission present and the witnesses.

Art. 193. The judges of the District Courts shall fix the time at which grand juries shall be empanelled in the parishes composing their respective districts, provided that there shall be empanelled a Grand Jury in each parish twice in each year, to remain in office until a succeeding grand jury is empanelled; and provided, further, that no grand jury shall be empanelled for more than eight months, nor less than four months, except in the Parish of Cameron, in which at least one grand jury shall be empanelled in each year.

Art. 194. In districts composed of more than one parish the judge may empanel the grand jury and deliver his charge in advance of the time fixed for the beginning of the next session of the court and in that event it shall be the duty of the grand jurors to proceed at once to the performance of their duties as prescribed by law.

CHAPTER 3.

OF THE DRAWING AND SELECTING OF JURIES IN THE PARISH OF ORLEANS.

Art. 195. The judges of the Criminal District Court for the Parish of Orleans, sitting en banc, shall select and appoint from the registered voters of the Parish of Orleans, three persons to be removable at their pleasure, who shall

constitute a Board of Jury Commissioners, two of whom shall be a quorum. Each of said Commissioners shall receive a salary of Three Thousand ($3000.00) Dollars per annum, payable monthly, by the City of New Orleans; and if in case of absence or inability to act from any cause, there shall be no quorum of said Board, the said judges of the Criminal District Court for the Parish of Orleans, sitting en banc, shall appoint Commissioners to fill such temporary vacancy or vancancies who shall have all the power of a jury commissioner under this Code. This Article shall go into effect immediately upon the expiration of the terms of office of the present Jury Commissioners.

Art. 196. The Jury Commissioners for the Parish of Orleans shall qualify all persons before their selection as jurors, but the judges of the several District Courts shall have the right to decide upon the competency of jurors.

Art. 197. The Jury Commissioners for the Parish of Orleans shall administer the following oath to all persons appearing before them:

> "You will well and truly answer all such questions as may be put to you touching the qualifications of one.....(or of yourself) to serve as a juror. So help you God."

Any willful and corrupt false swearing by any person before said commissioners, or either of them, shall be deemed willful perjury and punished in the manner now prescribed by law for such offense.

Art. 198. The said Commissioners shall select at large, impartially, from the citizens of the Parish of Orleans having the qualifications requisite to register as voters, the names of not less than one thousand persons competent under this Code to serve as jurors. A list of these names shall be prepared, certified to by the Commissioners, and kept as a part of the records of their office subject to the orders of the judges of the Criminal District Court of said Parish. The names on said list shall be copied on slips prepared for the purpose, with the number and address corresponding to that on the lists and shall be placed in the jury wheel from which the drawing is to be made. No name

shall be cancelled from said list or withdrawn from the jury wheel without an order of court, and the said list shall be a correct and perfect record of the names in the jury wheel. The said list shall be supplemented from time to time as the necessities of jury service may require. No drawing shall be made from a list of less than one thousand names, unless in an extraordinary case when tales jurors are ordered by one of the judges of the Criminal District Court, said judge may, in his discretion, in order to avoid delay, order said drawing from a list and jury wheel containing not less than six hundred names, and in such cases it shall be the duty of said Commissioners immediately after said drawing to refill the said wheel and complete said list so as to reach the required number of one thousand names.

Art. 199. Not earlier than the fifteenth day of each calendar month, and not later than the twenty-fifth day of each calendar month, the said Commissioners, together with the said Sheriff, shall draw from the said wheel not less than one hundred and fifty names, when jurors are to be summoned for service in only two sections of the Criminal District Court, and not less than seventy-five additional names for each section of the Court ordering a drawing for a special jury term, and persons whose names shall be so drawn shall constitute the petit jury for the session of the Criminal District Court next succeeding said drawing, provided that when said names shall have been drawn, said Commissioners shall assign not less than seventy-five of said jurors to each section of the Criminal District Court for which said drawing shall have been held, and said Commissioners shall distinctly set forth in each subpoena directed to each juror so drawn the particular section of the Criminal District Court to which said juror shall have been assigned; provided further, that in any case where a jury has been selected and empanelled if said case be not concluded before the expiration of said session, the jurors so empanelled shall continue to serve until said case shall have been finally decided, or until said jury shall have been otherwise discharged by the Court.

Art. 200. Not earlier than the fifteenth and not later than the twentieth of February of each year, and not earlier

than the fifteenth and not later than the twentieth day of August of each year, the said Commissioners, together with the Sheriff, shall draw from the said wheel the names of seventy-five persons, which said names, upon the day next following said drawing, not a Sunday or legal holiday or legal half-holiday shall be submitted by said Commissioners to the presiding judge of that section of the Criminal District Court whose turn it shall happen then to be, to empanel the incoming grand jury; and said judge, from the names thus submitted, shall select twelve persons who shall constitute the Grand Jury for the Parish of Orleans for the Grand Jury term next ensuing. Each judge of the Criminal Distrist Court shall, in rotation, select the Grand Jury for the Parish of Orleans. The order of sequence among the judges in the selection of the Grand Jury prevailing at the time this Article goes into effect shall be preserved and continue. Each Grand Jury shall be under the exclusive control and instruction of that judge of the section of the Criminal District Court who shall have appointed said Grand Jury and such Grand Jury shall make all of its findings and returns in open court to said judge; provided, that if the judge to whom the control of the Grand Jury shall belong shall not be from any cause in the actual discharge of his duties as judge, the Judges of the Criminal District Court then present shall designate some other judge to empanel and instruct said Grand Jury, or to receive its returns and findings, as the case may be, and the Judge so designated shall continue to act for the Judge to whom the control of such Grand Jury shall belong until said last mentioned judge shall return to the discharge of duties; provided further, that the Grand Jury in office at the time of the adoption of this Code shall, until the expiration of that term of office, be under the control of the presiding judge of the section by whom it was selected and shall return all indictments and findings to said judge in open Court.

Art. 201. All vacancies occurring in the membership of the grand jury shall be filled by the judge of that section of the court in which it shall have been empanelled, who shall either order the jury commission to draw from the

jury wheel not less than twelve names, from which he shall select the persons necessary to fill said vacancies, or he shall select from the panel of petit jurors serving in his section such number of persons as may be necessary to fill said vacancies.

Art. 202. All subpoenas, notices and papers issued by the Jury Commission shall be served by the Criminal Sheriff or his deputies.

Art. 203. Whenever on the trial of any criminal case in the Parish of Orleans the regular panel of jurors for the term shall have been exhausted and the jury in the case on trial shall not be complete, or when, in the opinion of the judge, in the case fixed for trial talesmen will be required to complete the jury, he shall enter an order on the minutes directing the Criminal Sheriff, or one of his deputies, to draw such number of tales jurors as in the opinion of the court may be necessary to complete the jury from the jury wheel containing the jurymen drawn by the jury commissioners, and no tales jurymen shall be drawn from the bystanders.

The Criminal Sheriff shall immediately after such drawing summon said jurymen to attend at such time as the court shall have designated in said order.

Art. 204. The grand jury of the Parish of Orleans shall serve for six months unless sooner discharged by the court.

Art. 205. Whenever a petit jury for the Criminal District Court shall have been drawn, and before the trial of every cause, the criminal sheriff shall place in a box the names of the persons composing the said petit jury, and shall draw therefrom, in open court, by lot; and the order in which the names shall be thus drawn shall be that in which they shall be presented for empanellment; provided, in case the said panel should be exhausted, the names of the tales jurors shall be placed by said criminal sheriff in said box, and shall be drawn in open court, by lot, and said tales jurors shall be presented for empanellment in the same manner as herein provided for the regular panel of petit jurors.

CHAPTER 4.

OF OBJECTIONS TO THE DRAWING OR SELECTING OF JURIES.

Art. 206. All objections to the manner of selecting or drawing any juror or jury or to any defect or irregularity that can be pleaded against any array or venire must be filed, pleaded, heard or urged before the expiration of the third judicial day of the term for which said jury shall have been drawn, or before entering upon the trial of the case if it be begun sooner; otherwise, all such objections shall be considered as waived and shall not afterwards be urged or heard.

Art. 207. It shall not be sufficient cause to challenge the venire selected for any session of the court or portion thereof or for service at any time in any parish or district of this State, or to set aside the venire, because some of the jurors on the list are not qualified to act, nor because of any other defect or irregularity in the manner of selecting the jury, or in the composition, summoning or proceedings of the Jury Commission, unless some fraud has been practiced or some great wrong committed that would work irreparable injury; provided, that it shall be good ground to challenge, for cause, any juror who is not qualified by law to act.

CHAPTER 5.

OF THE OATH OF AND CHARGE TO THE GRAND JURY.

Art. 208. Upon the empanellment of the grand jury, each of the grand jurors shall be sworn that he will diligently inquire and true presentment make of such matters and things as shall be given to the grand jurors in charge, or otherwise come to his knowledge; that he will keep secret his own counsel, that of his fellows and that of the State; that he will present no one from envy, hatred, or malice and will not leave any one unpresented from fear, favor, affection, hope of reward, or gain, but will present all things truly, as they come to his knowledge, according to the best of his understanding; provided that unless the judge other-

wise directs, the oath hereinabove provided for shall be administered in full only to the foreman, and the other jurors present shall be required only to take oath that they have each heard the oath administered to the foreman, and that they will each well and truly keep that oath; provided, further, that the full oath shall be administered to every grand juror who may be appointed to fill a vacancy in the grand jury and to every grand juror not personally present at the taking of the oath by the foreman.

Art. 209. Upon the empanelling of such grand jury the district judge shall charge the grand jurors upon their duties.

CHAPTER 6.

OF THE QUORUM AND MEETINGS OF THE GRAND JURY.

Art. 210. The grand jury of each parish shall consist of twelve members, nine of whom shall be necessary to constitute a quorum and nine of whom must concur to find an indictment.

Art. 211. The grand jury shall meet at the parish seat at such times as the judge may order, provided that without leave of court no adjournment shall be for a longer time than three days.

Art. 212. The grand jury may be called in special meeting at any time or at any place within the parish by the district judge, or by the foreman with the approval of the district judge.

CHAPTER 7.

OF THE POWERS AND DUTIES OF THE GRAND JURY.

Art. 213. The grand jury shall inquire into all crimes punishable with capital punishment and into all other crimes triable within the parish, when their attention has been directed to the subject of such crime either by instructions from the court or at the instance of the District Attorney, and the grand jury ought to find an indictment in every case submitted to them in which, in their judgment, the evi-

dence before them, if unexplained and uncontradicted, would warrant a conviction.

Art. 214. The grand jury shall have power to act only in one of the following ways:

First: By returning a true bill;

Second: By returning not a true bill; or

Third: By pretermitting entirely the matter investigated—that is to say, by not returning either a true bill or not a true bill or taking other action.

If the evidence presented to the grand jury does not justify finding a true bill, the grand jury shall limit its action to returning not a true bill or pretermitting all action, and the grand jury shall not, in any case whatever, make any report on any matter submitted to it for investigation, except in the manner hereinabove indicated, as the grand jury is an accusatory body and not a censor of public morals. It shall make no reports to the court other than the return of presentment or indictment, except as specifically provided in Article 215 hereof.

Art. 215. Each grand jury shall inspect every prison, place of detention, asylum and hospital within the parish, and make report to the district judge of how the prisoners and inmates of every such institution are treated, and every such report shall state the number of prisoners and inmates in every such public institution, and the costs of maintenance, and shall state the length of time that each prisoner awaiting trial, at the time of said report, shall have been so held for trial.

Art. 216. The foreman, or in his absence the acting foreman, shall administer the oath to each witness appearing before the grand jury.

Art. 217. In the investigation of a crime the grand jury can receive no other than legal evidence and such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence.

Art. 218. The grand jury is not bound to hear evidence for the defendant; but they ought to weigh all evidence submitted to them, and where they have reason to

believe that other evidence within their reach will explain the charge, they should order such evidence to be produced.

Art. 219. The sessions of the grand jury shall be secret, but the District Attorney, as their legal adviser, shall have free access to said sessions; the District Attorney may cause the testimony taken before the grand jury to be reported by a stenographer, who must be first sworn by the foreman of the grand jury; and whenever a witness is unable to speak the English language, the grand jury shall have the right, at its discretion, to employ an interpreter to translate the testimony of the witness, but such interpreter shall be first sworn to keep secret the proceedings of the grand jury.

TITLE XIX.

OF THE INDICTMENT.

CHAPTER 1.

OF THE COUNTS OF AN INDICTMENT.

Art. 220. The rules of pleading contained in this Code shall apply as much to affidavits charging crimes and to informations as to indictments, and whenever the word "indictment" is used, unless it be the clear intent to restrict that word to the finding by a grand jury, it shall be taken to include affidavit and information.

Art. 221. Except as otherwise provided under this title, no indictment shall charge more than one crime, but the same crime may be charged in different ways in several counts.

Art. 222. When two or more crimes result from a single act, or from one continuous unlawful transaction, only one indictment will lie; but each of said distinct crimes, though some of them be felonies and others of them misdemeanors, may be separately charged in distinct counts in the same indictment.

Art. 223. Counts are charges of crime joined in the same indictment, and recitals in one count need not be repeated in any subsequent count except by means of a clear and distinct reference, and the conclusion of the indictment applies to all the counts.

Art. 224. Except as otherwise provided under this title, it is duplicity to include in the same count two separate and distinct offenses.

Art. 225. The objection of duplicity cannot be urged after the jury has been sworn, and must be set up either by demurrer or by a motion to quash the indictment.

Art. 226. Several distinct offenses, or the intent necessary to constitute such offenses, disjunctively enumerated in the same law or in the same section of a criminal statute, may be cumulated in the same count, when it appears that they are connected with the same transaction and constitute but one act, but in that event they must be charged conjunctively.

Art. 227. Where each of the acts charged in the same count is a minor offense, if, when taken together they constitute but one affair and make but one major offense, the indictment so charging such major offense is not open to the objection of duplicity.

Art. 228. When the indictment clearly indicates the commission of but one act, it is not bad for duplicity, because in describing how the major offense was committed and for the purpose of such description, it sets out in the same count with such major offense a minor offense.

Art. 229. It shall be lawful to insert several counts in the same indictment against the same defendant for any number of distinct acts of stealing, of embezzlement, of obtaining money by false pretenses, or of swindling, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and the aggregate amount of these thefts, embezzlements, obtaining by false pretenses, or swindling, shall determine the grade of the offense charged; provided, that whenever any one, by virtue of his office or employment or of any fiduciary relationship which he shall

have towards another, shall have entrusted to him any money or other property, and shall embezzle the same, while so entrusted to him, he may be charged in one indictment and in one count with the embezzlement of the aggregate amount embezzled by him during the entire time of his holding such office, employment or relationship, which said aggregate amount shall determine the grade of the offense charged; provided, further, that proof of the embezzlement by defendant at any time during his term of office, employment, or fiduciary relationship, of any part of the money or other property with which he shall have been entrusted shall warrant a verdict of guilty of that grade of the offense shown by the value of such money or property to have been committed.

Art. 230. The right to compel the district attorney to elect on which charge of an indictment he will proceed, whether the charge be contained in the same count or in separate counts, is confined to cases where the indictment contains charges which are entirely distinct and grow out of different transactions; and the motion to compel such election can be made only before the trial begins.

CHAPTER 2.

OF THE RECITALS REQUISITE IN INDICTMENTS IN GENERAL.

Art. 231. The indictment must state every fact and circumstance necessary to constitute the offense, but it need do no more, and it is immaterial whether the language of the statute creating the offense, or words unequivocally conveying the meaning of the statute, be used.

Art. 232. It is no objection to an indictment that it does not aver that accused was not embraced within the terms of the proviso of the statute creating the offense; for what comes by way of a proviso or exception in a statute must be urged by way of defense.

Art. 233. The indictment may be substantially in the following form:

In the.....(here give the name of the Court) .....term, 19....., State of Louisiana v..... (here give the name or description of the accused).

The grand jury of the Parish of..... ..... do present that (here give name or description of the accused), (here set forth the offense and transaction according to the rules herein enunciated), contrary to the law of the State of Louisiana and against the peace and dignity of the same.

Art. 234. When the name of the person injured is substantial, and not merely descriptive, that is to say, when the injury is to the person, as in murder, rape or wounding, the indictment shall state the name of such person, or if unknown, that it is unknown, and if unknown, the indictment shall make it appear, by sufficient allegation, who was the party injured.

Art. 235. It shall not be necessary to state any venue in the body of the indictment, but the State, parish or other jurisdiction named in the margin thereof, shall be taken to be the venue for all the facts stated in the body of the indictment; provided, that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment.

Art. 236. In every indictment in which it shall be necessary to make an averment as to any money or any bank note, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, as far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, shall not be proved.

Art. 237. In all cases whenever it shall be necessary to make any averment in an indictment, as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or of any part thereof.

Art. 238. No indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears from the record," or of the words "with force and arms," or the word "feloniously," or of the word "unlawfully"; nor for that any person mentioned in the indictment is designated by name of his office or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which an offense was committed where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or of an impossible day, or on a day that never happened, nor for want of a proper and perfect venue; nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damages, injury or spoil in any case where the value or price or the amount of damages, injury, or spoil is not of the essence of the offense.

CHAPTER 3.

OF THE RECITALS REQUISITE IN INDICTMENTS FOR CERTAIN CRIMES.

Art. 239. The following forms of indictments may be used in the cases in which they are applicable, but any other forms authorized by this or any other law of this State may also be used:

Affray—A. B. and C. D. made an affray.

Assault—A B. assaulted C. D.

Assault and Battery—A. B. committed an assault and battery on C. D.

Assault with Intent—A. B. assaulted C. D. with intent to murder, or kill, or rob, or maim, or rape (as the case may be).

Arson—A. B. committed arson by burning the dwelling house of C. D.

Attempt—A. B. attempted to steal from C. D.; A. B. attempted to commit larceny of the goods of C. D.;

A. B. attempted to commit burglary of a building belonging to C. D. (as the case may be).

Burglary—A. B. committed burglary of the house of C. D. armed with a dangerous weapon. A. B. broke and entered the dwelling house of C. D. with intent to commit larceny, or murder, or robbery therein (as the case may be), armed or not armed with a dangerous weapon (as the case may be).

Forgery—A. B. forged a certain instrument purporting to be a promissory note (or describe instrument or give its tenor or substance).

Larceny—Embezzlement and False Pretenses. A. B. stole or embezzled or obtained by false pretenses (as the case may be.....(describe property stolen, embezzled or obtained by false pretenses, and state value of property).

Murder—A. B. murdered C. D.

Manslaughter—A. B. killed C. D.

Perjury—A. B. appeared as a witness in a case between C. D. and E. F. being heard before the (set forth the tribunal) and committed perjury by testifying as follows: (set forth the testimony).

Rape—A. B. raped or ravished C. D.

Provided, That the District Attorney, if requested by the accused prior to arraignment may be required by the Judge to furnish a bill of particulars setting up more specifically the nature of the offense charged.

Art. 240. In any indictment for forging, uttering, stealing, destroying, obtaining by false pretenses, or by swindling, embezzling, or concealing any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing the same or the value thereof.

Art. 241. In any indictment for a conspiracy against trade it shall be sufficient to state the purposes or objects of the trust or combination and that the accused was a mem-

ber of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

Art. 242. Except in those cases in which the aiding and abetting in or the procuring of the commission of a designated crime is made a distinct offense, it shall be unnecessary in any indictment to allege that defendant did aid and assist in or procure the commission of the crime charged, but the aider and abetter and the accessory before the fact may each be indicted as a principal, that is to say, charged directly with the commission of the crime.

Art. 243. Any defect, error or ommission in the caption, commencement or conclusion of an indictment may be amended.

Art. 244. No indictment is invalid by reason of any repugnant allegations contained therein, provided that an offense is charged. All unnecessary allegations shall be rejected as surplusage.

Art. 245. In any indictment it is sufficient for the purpose of identifying the accused to state his true name, to state the name, appellation or nickname by which he has been or is known, to state a fictitious name, or to describe him as a person whose name is unknown or to describe him in any other manner. In stating the true name or the name by which the accused has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more christian name or names, or a surname and one or more abbreviations or initials of a christian name or names. It is sufficient for the purpose of identifying any group or association of persons, not incorporated, to state the proper name of such group or association (if such there be), to state any name or designation by which the group or association has been or is known, to state the names of all the persons in such group or association or of one or more of them, or to state the name or names of one or more persons in such group or association referring to the other or others as "another," or "others." It is sufficient for the purpose of identifying a corporation to state the corporate name of such corporation, or any name or designation by which such corporation has been or is known. It is not

necessary for the purpose of identifying any group or association of persons or any corporation to state or prove the legal form of such group or association of persons or of such corporation. In no case is it necessary to aver or prove that the true name of any person, group or association of persons or corporation is unknown to the grand jury, complainant or prosecuting officer. If in the course of trial the true name of any person, group or association of persons or corporation identified otherwise than by the true name, is disclosed by the evidence, the court shall on motion of the accused or of the prosecuting attorney, and may without such motion, insert the true name in the indictment wherever the name appears otherwise.

Art. 246. Whenever it is necessary to allege a prior conviction of the accused in an indictment, it is sufficient to allege that the accused was at a certain stated time, in a certain stated court, convicted of a certain stated offense, giving the name of the offense, if it have one, or stating the substantial elements thereof.

Art. 247. In pleading a statute or a right derived therefrom it is sufficient to refer to the statute by its title, or in any other manner which identifies the statute and the court must thereupon take judicial notice thereof.

Art. 248. In pleading a judgment or other determination of, or a proceeding before any court or officer, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or officer, but it is sufficient to allege generally that such judgment or determination was duly given or made or such proceedings had.

Art. 249. In any prosecution for the offenses of embezzlement, larceny, or obtaining money or property by false pretenses, it shall be sufficient to allege generally in the indictment the embezzlement, larceny or obtaining by false pretenses of personal property to a certain amount without specifying the particulars of such embezzlement, larceny or obtaining by false pretenses, and on the trial evidence may be given of any such embezzlement, larceny or obtaining money or property by false pretenses within six months next after the time stated in the indictment, and

it shall be sufficient to maintain the charge in the indictment and shall not be deemed at variance if it shall be proved that any similar personal property was fraudulently embezzled, stolen or obtained by false pretenses within the said period of six months.

Art. 250. An indictment for larceny may contain also a count for embezzlement, or for receiving or having in possession, or aiding in concealing the same property, knowing it to have been stolen, and the jury may convict of any such offense; and the jury may find all or any of the persons indicted guilty of any of the offenses charged in the indictment. The district attorney shall not be required to elect between the offenses so charged.

Art. 251. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libelled of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him.

Art. 252. In all indictments for murder and manslaughter it shall not be necessary to set forth the manner in which nor the means by which the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the defendant did murder the deceased; and it shall be sufficient in manslaughter to charge that the defendant did kill the deceased.

Art. 253. An indictment for murder or manslaughter may contain also a count for procuring or attempting to procure an abortion and the jury may convict of either offense. Dying declarations shall be admissible in evidence in proof of either count.

Art. 254. An indictment for perjury or for subornation of perjury or for false swearing is sufficient which indicates the offense for which the accused is prosecuted, the nature of the controversy in respect of which the offense was committed and before what court or officer the oath was taken or was to have been taken, without setting forth any part of the records or proceedings with which the oath was connected, and without stating the commission or authority of the court or other authority before whom the perjury or false swearing was committed, or was to have been com-

mitted, or the form of the oath or affirmation or the manner of administering the same.

Art. 255. No motion to quash, plea in abatement or other dilatory plea to the indictment shall be received by any court unless the party offering such plea shall prove the truth thereof by affidavit, or by some other sworn evidence.

Art. 256. No indictment shall be quashed, set aside or dismissed for any one or more of the following defects: (First) That there is a misjoinder of the parties accused; (Second) That there is a misjoinder of the offenses charged in the indictment, or duplicity therein; (Third) That any uncertainty exists therein. If the court be of the opinion that the first and second defects or either of them exist in any indictment, it may sever such indictment into separate indictments, or into separate counts as shall be proper. If the court be of the opinion that the third defect exists in any indictment, it may order that the indictment be amended to cure such defect.

Art. 257. No indictment shall be quashed, set aside or dismissed or motion to quash be sustained or any motion for delay of sentence for the purpose of review be granted, nor shall any conviction be set aside or reversed on account of any defect in form or substance of the indictment, unless the objection to such indictment, specifically stating the defect claimed, be made prior to the commencement of the trial or at such time thereafter as the court in its discretion permit. The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been empanelled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury. In case a jury shall be discharged

from further consideration of a case under this section, the accused shall not be deemed to have been in jeopardy. No action of the court in refusing a continuance or postponement under this article shall be reviewable except after motion to and refusal by the trial court to grant a new trial therefor and no appeal based upon such action of the court shall be sustained, nor reversal had, unless from consideration of the whole proceedings, the reviewing court shall find that the accused was prejudiced in his defense or that a failure of justice resulted.

TITLE XX.

OF THE PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE TRIAL.

CHAPTER 1.

OF ARRAIGNMENT.

Art. 258. Arraignment consists in reading to the defendant, at the bar of the court, the accusation against him contained in the indictment, and calling upon him then and there to plead.

Art. 259. Defendant must plead when arraigned; and if he refuse, or stand mute, the plea of not guilty shall be entered for him.

Art. 260. Before arraignment there is no issue betweeen the defendant and the State, but if the defendant voluntarily enters upon the trial without arraignment it shall be considered as if he had pleaded not guilty.

Art. 261. If the charge be a felony, defendant can plead only in person; if a misdemeanor, he may plead through counsel.

Art. 262. Though the charge against the defendant be a felony, he may, if present in person, waive in person or through counsel, the reading of the indictment and then and there plead.

Art. 263. In all felony cases, not capital, or necessarily punishable with imprisonment at hard labor, the defendant shall at the time of arraignment be informed by the court that he may waive trial by jury and elect to be tried by the judge alone. If he so elect the judge shall fix and try the case without a jury according to the prescribed rules of the court.

Art. 264. Whenever the defendant shall elect to be tried by the judge alone, every subsequent plea, except that of insanity, shall be so tried. The defendant cannot waive trial by jury of his plea of insanity, but if the jury decide that plea against him, he may then elect to be tried by the judge alone in the cases provided in the foregoing article.

CHAPTER 2.

OF THE SEVERAL PLEAS TO AN INDICTMENT.

Art. 265. There are four kinds of pleas to an indictment:

1. Guilty.
2. Not guilty.
3. Former Jeopardy.
4. Insanity.

CHAPTER 3.

OF THE PLEAS OF GUILTY AND NOT GUILTY.

Art. 266. No court has authority to receive an unqualified plea of guilty in any capital case, and if any defendant so plead, the court shall refuse to receive the plea and shall order the plea of not guilty entered for him.

Art. 267. The plea of not guilty throws upon the State the burden of proving, beyond a reasonable doubt, every fact and circumstance necessary to constitute defendant's guilt; the plea of guilty admits guilt only in the manner and form charged in the indictment.

Art. 268. The defendant may at any time withdraw his plea of not guilty and then plead guilty; but without the consent of the district attorney the court is without authority to accept a plea of guilty of an offense of any

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grade less than the highest grade charged in the indictment.

Art. 269. The defendant may at any time, with the consent of the court, withdraw his plea of not guilty and then set up some other plea or demur or move to quash the indictment.

Art. 270. The allowance or disallowance of the withdrawal of a plea of guilty is within the sound discretion of the court.

CHAPTER 4.

OF THE PLEA OF INSANITY.

Art. 271. Whenever insanity shall be relied upon either as a defense or as a reason for defendant's not being presently tried, such insanity shall be set up as a separate and special plea and shall be filed, tried and disposed of prior to any trial of the plea of not guilty, and no evidence of insanity shall be admissible upon the trial of the plea of not guilty.

Art. 272. Whenever any plea of insanity shall have been filed, the presiding judge shall at once notify in writing the Coroner of the Parish, the Superintendent of the Hospital for the Insane at Jackson and the Superintendent of the Hospital for the Insane at Pineville. The said Coroner and the said Superintendents shall together form a Commission of Lunacy to inquire into the sanity of the accused; provided that each of said Superintendents may designate and require to act in his place on said Commission any competent physician.

The Commissioners, as soon as practicable after said notification, shall meet at the parish seat, and proceed with the investigation into the sanity of the accused, and, for that purpose, shall have the right of free access to him at all reasonable times and shall have full power and authority to summon witnesses and to enforce their attendance.

The findings of the Commission or of a majority of its members shall, upon being filed in court, constitute the report of the Commission of Lunacy. If said report be that

the accused is presently insane, or was insane at the time of the commission of the crime, he shall forthwith be committed to the criminal ward of a hospital for the insane, there to remain until discharged in due course of law. But if the report be that the accused is presently sane and was sane at the time of the commission of the crime, the trial of the plea of insanity shall be proceeded with as provided in this Chapter.

Art. 273. Every plea of insanity shall be triable by the judge without a jury, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors concurring shall be necessary to the finding of a verdict on this plea as would be necessary to a verdict on the charge in the indictment.

Art. 274. If upon the trial of the plea of present insanity the judge or the jury, as the case may be, shall find that defendant is presently insane, he shall be committed to the criminal ward of a hospital for the insane, there to await trial until such time as his reason shall have been restored; provided that the district attorney having charge of the prosecution, whenever he believes the defendant no longer insane, may have the question of insanity again determined in the same manner in which it was originally determined.

Art. 275. If upon the trial of the plea of insanity as a defense, the judge or the jury, as the case may be, shall find that the defendant was insane, at the time of the commission of the crime, he shall be committed to the criminal ward of a hospital for the insane, there to remain until discharged in due course of law; provided that no person committed under the provisions of this article shall be released otherwise than as pointed out in the next succeeding article.

Art. 276. Whenever it shall be alleged that any person committed to a hospital because insane at the time of the commission of the crime, has regained his reason, a rule to show cause why such person should not be released shall be taken upon and tried contradictorily with the district attorney of the parish from which such person shall have been committed, which rule shall be tried by the Judge, or by a

jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors shall be necessary to the finding of sanity as would be necessary to a verdict on the charge in the indictment.

Art. 277. No ruling of the court made on the trial of any plea of insanity shall, before sentence, be reviewable by any other court, either under its appellate or supervisory powers.

CHAPTER 5.

OF THE PLEA OF FORMER JEOPARDY.

Art. 278. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial, or where there shall have been a mistrial, or a motion in arrest of judgment shall have been sustained.

Art. 279. When the same act is punishable both by statute and by city ordinance, an acquittal or conviction of the violation of the city ordinance is no bar to a prosecution under the statute.

Art. 280. The accused can avail himself of the plea of former jeopardy, only under such circumstances as would enable him to sustain the plea of former acquittal or of former conviction.

Art. 281. Jeopardy begins as soon as the jury has been completed, sworn and the indictment read to them. In all cases tried by the judge without the intervention of a jury jeopardy begins the moment after the first witness has been sworn.

Art. 282. After jeopardy has begun, the arbitrary dismissal of the jury, without cause and without the consent of the accused, operates as an acquittal.

Art. 283. To constitute former jeopardy it is necessary, that the court in which the former trial took place had jurisdiction, and was legally constituted; that the former acquittal or conviction was rendered on a sufficient indictment; that the proceedings ending in the former acquittal or conviction were valid; that the former verdict rendered was responsive to some charge contained in the

indictment and was of such form as to be the basis of a valid judgment; and that the offense formerly charged and that presently charged are either identical, or different grades of the same offense, or that the one is necessarily included in the other.

Art. 284. In every plea of former conviction or of former acquittal, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the offense charged in the indictment.

Art. 285. The plea of former acquittal or of former conviction shall be urged, tried and disposed of before trial on the plea of not guilty.

Art. 286. Any plea of former jeopardy shall be triable by the judge without a jury.

Art. 287 No court, before sentence, shall, either under its appellate or supervisory jurisdiction, review any ruling made on the trial of any plea of former jeopardy.

CHAPTER 6.

OF DEMURRERS AND MOTIONS TO QUASH.

Art. 288. Every objection to any indictment shall be taken by demurrer or by motion to quash such indictment, before the arraignment; and every court before which any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, and thereupon the trial shall proceed as if no defect had appeared.

Art. 289. A demurrer admits the truth of every fact which is sufficiently alleged, but raises the objection that, as a matter of law, the indictment does not charge an offense, or does not charge such offense that the defendant can be, as a matter of law, required to answer.

Art. 290. Any defect apparent upon the face of the indictment, or any defect fatal to the validity of the proceedings may be set up in a motion to quash the indictment, whether such fatal defect be one apparent upon the face of the record, or be such as can be established only by the production of evidence.

Art. 291. Both the demurrer and the motion to quash must be in writing, must specify the grounds upon which based and must be filed, tried and disposed of before trial on the merits.

Art 292. Defects in indictments can be urged before verdict only by demurrer or a motion to quash, and the accused is not entitled to any bill of particulars as to the subject matter charged in the indictment, but the trial judge may, in his discretion, require the district attorney to file in the case such data as, in the opinion of the judge, may be sufficient.

CHAPTER 7.

OF THE CHANGE OF VENUE.

Art. 293. The parish in which the offense was committed is called the "venue"; the removal of a case for trial from the parish in which the offense was committed to another parish is called a "change of venue."

Art. 294. Whenever in any case, in which the commission of a felony is charged, pending in any district court, either the defendant or the district attorney shall desire to change the venue, the defendant or the district attorney, as the case may be, shall make an application to the judge of said court, either in open court or in chambers, for the issuance of an order directed to the opposite party requiring him to show cause upon a date to be fixed in said order by the court, why a change of venue should not be granted.

Art. 295. No change of venue shall be awarded until the accused shall have been arraigned and shall have pleaded "not guilty."

Art. 296. Every application for a change of venue shall be in writing, and shall set out that the applicant has good reason to believe and does believe that by reason of prejudice existing in the public mind, or for some other sufficient cause, described by him, an impartial trial cannot be obtained in the parish wherein the indictment is pending; that the application has been made as soon as it could be after the discovery of such prejudice or other

cause, and is not for delay, but to obtain an impartial trial. To every application for a change of venue made on behalf of any defendant shall be annexed the affidavit either of the defendant or of his counsel, that all the allegations contained in said application are true.

Art. 297. If, on the trial of any application for a change of venue, it shall be established, by legal and sufficient evidence, that a fair and impartial trial cannot be had in the parish in which the felony shall be charged to have been committed and in which the case is pending, the judge shall order a change of venue to an adjoining parish of the same judicial district, or to a parish of an adjoining district, and, by preference, to that parish in which a district court shall next be held.

Art. 298. After a cause shall have been removed as above provided for, it shall not be a second time removed under any pretense whatsoever.

Art. 299. Whenever a change of venue shall have been awarded, the clerk of the court in which the cause is pending shall make out a descriptive list of the indictment, pleas and all other documents relating to such cause, and a copy of all orders which may have been entered on the minutes of the court, and shall deliver the same, together with the original indictment and other papers appertaining to the cause, to the sheriff of his parish, whose duty it shall be immediately to deliver or forward the same to the clerk of the parish to which the cause shall have been removed.

Art. 300. The clerk of the court to which any cause shall have been thus removed shall, on receipt of the indictment and other papers, enter the cause upon the docket of his court; and it shall be heard, tried and determined in the same manner as if the proceedings had originally been instituted therein.

Art. 301. Whenever a change of venue shall have been granted in any case in which the defendant shall be in actual custody, the sheriff shall immediately convey him to the parish to which the cause shall have been removed, and deliver him to the sheriff of said parish, whose duty it shall

be to hold him in safe custody until otherwise ordered by the court.

Art. 302. Whenever a change of venue shall have been granted in any case in which the defendant shall be at large upon bail, or in the custody of his sureties, it shall be his duty to be and appear at the district court of the parish to which the cause shall have been removed, and to attend at such court from day to day, and from term to term; and all bonds and recognizances entered into by him and his sureties shall remain in full force and effect, notwithstanding the change of venue; and in case of non-appearance of the accused at the court to which the cause shall have been removed, judgment shall be entered up in that court against him and his securities in the same manner as if the case had remained in the parish from which it had been removed.

Art. 303. Whenever a change of venue shall have been ordered, the sentence and judgment of the court shall be executed by the sheriff of the parish to which the cause may have been removed.

Art. 304. No court, before sentence, shall at the instance of any defendant, review, either under its appellate or supervisory jurisdiction, any ruling changing or refusing to change the venue.

Art. 305. When, over the objection of the State, a ruling shall have been made changing or refusing to change the venue, the State shall have the right, before any trial on the merits, and within the legal delay, to appeal to the Supreme Court from such ruling.

CHAPTER 8.

OF THE RECUSATION AND ABSENCE OF JUDGES AND DISTRICT ATTORNEYS.

Art. 306. In the event of the recusation, absence or disability from any cause to act of any judge or district attorney, the person appointed in his place shall have all the powers with reference to such recused case during such absence or disability as the regular judge or district attorney ordinarily has.

Art. 307. The causes for which any judge in any criminal case shall be recused, shall be as follows:

First—His being interested in the cause; provided that in all causes in which the State, the parishes or political or religious corporations are interested, it shall not be sufficient cause to challenge the judge, who may have cognizance of the case, to allege that he is a citizen or inhabitant of the State or of the Parish, or a member of said political or religious corporation, or that he pays any State, parish or city tax;

Second—His being related to the accused or to the party injured within the fourth degree;

Third—His having been employed or consulted as advocate or counsel in the cause;

Fourth—His being the husband, the father-in-law, son-in-law, or brother-in-law of the accused or of the party injured;

Fifth—His having rendered definitive judgment in the cause in any other court.

Art. 308. In those districts or parishes in which the District Court is presided over by two or more judges, in case of the recusation, absence or disability of one of said judges, or of a vacancy in his office, one of the other judges shall preside at the trial of such recused case and at the trial of all cases during the time of the absence, disability or vacancy.

Art. 309. In any criminal case in which a district judge shall be recused, those districts and parishes in which there shall be more than one district judge excepted, he shall, for the trial thereof, appoint a lawyer having the qualifications of a judge of the district court in which the recused case is pending, and if no such lawyer can be obtained at the term of the court at which the recusation is declared, the judge shall immediately appoint some district judge of an adjoining district to try the case, who shall be notified of his appointment in the manner provided by article 310.

Art. 310. In case of the appointment of a district judge of an adjoining district, the order of the court mak-

ing the appointment shall be entered upon the minutes thereof, and the clerk of said court shall make out a certified copy of the order from the minutes, under the seal of the court, and forward the same immediately to the sheriff of the parish of residence of the judge so appointed, or of the parish where the said judge may be at the time, to be by him, the sheriff, served on the judge, and the district judge so appointed shall, as early as practicable, or as the requirements of his district may permit, go to the court at which the recused case for the trial of which he shall have been appointed is pending, and there try and determine the case.

Art. 311. Whenever any district judge is prevented by any cause whatever from holding court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to the Supreme Court, or to any justice thereof, if, in the judgment of the court, or any justice, the public interest so require, the court or such justice shall designate and appoint any district judge of any other district to hold said court and discharge all the duties of the judge so disabled during such disability. Such appointment shall be filed in the clerk's office of and entered on the minutes of said District Court, and a certified copy thereof, under the seal of the court, shall be transmitted by the clerk of the District Court to the district judge so designated and appointed.

Art. 312. Whenever all the district judges (the Parish of Orleans excepted) of any of the judicial districts of this State are absent from their judicial district, on due proof thereof, it shall be lawful for the district judge of the adjoining district to grant such orders as the absent district judge or judges could grant if present.

Art. 313. If a district judge is unwilling to recuse himself when application therefor be made in writing setting forth legal cause for his recusation, he shall refer the application to another judge of the same district, if there be one, or to a judge of an adjoining district, to try and determine whether or not he shall be recused.

Art. 314. Any district attorney shall be recused by the judge in criminal cases:

First—If said district attorney be related to the party accused or to the party injured within the fourth degree, or be his father-in-law, or his son-in-law, or his brother-in-law, or be the husband of the accused or of the party injured;

Second—If said district attorney shall have been employed or consulted as attorney for the accused before his election or appointment as district attorney;

Third—If said district attorney shall have a personal interest adverse to that of the prosecution.

Art. 315. In the event of the recusation, absence or disability of any district attorney, the district judge shall appoint a lawyer having the qualifications of a district attorney of said district to act in the place of said recused district attorney, during the time of his absence or disbility; provided, that whenever the district judge shall, from any cause, be unable to make such appointment, he shall certify such fact in writing to the Attorney General, who shall then designate and appoint a district attorney of another district to act in place of the regular district attorney.

Art. 316. No ruling of the court, before sentence, recusing or refusing to recuse shall be reviewable by any other court, either under its appellate or supervisory powers.

Art. 317. When, over the objection of the State, a ruling shall have been made recusing or refusing to recuse, the State shall have the right, before trial on the merits, and within the legal delay, to have such ruling reviewed: in appealable cases, by appeal; in unappealable cases, by a resort to the supervisory powers of the proper tribunal.

CHAPTER 9.

OF SETTING CASES FOR TRIAL.

Art. 318. Cases shall be set down for trial in accordance with the rules of the court, provided that it shall

always be within the discretion of the court, upon the motion either of the district attorney or of the defendant, or with the consent of both parties, to assign a special day for the trial of any case.

Art. 319. When there is no rule of court regulating the setting of cases for trial, the defendant cannot be forced to trial upon the day set, unless he have been given such previous notice of such setting as will afford him ample time within which to summon his witnesses.

CHAPTER 10.

OF SEVERANCE.

Art. 320. Persons jointly indicted shall be jointly tried, unless the district attorney elect to place such persons separately upon trial, or unless the court, upon motion of defendant, shall, after a hearing contradictorily with the district attorney, order a severance.

Art. 321. No ruling of the court, before sentence, refusing to grant a severance, shall be reviewable by any other court, either under its appellate or supervisory powers.

CHAPTER 11.

OF CONTINUANCE.

Art. 322. In all criminal prosecutions the State, as well as the accused, shall have the right to a speedy public trial.

Art. 323. When a cause is called for trial, it shall be tried, unless the judge grants a continuance.

Art. 324. The granting or refusing of any continuance is wholly within the discretion of the trial judge and is not subject to be reviewed by any other court or judge; provided, that the District Attorney or the defendant, as the case may be, shall at all times be entitled, by invoking the supervisory jurisdiction of the proper tribunal, to enforce by mandamus the right to a speedy trial.

Art. 325. Every application for a continuance shall be by written motion alleging specifically the grounds upon

which it is based and that the application is not made for delay. The allegations of the motion when made on behalf of the accused must be sworn to by him or his counsel.

Art. 326. Every motion for a continuance based upon the absence of witnesses must show:

(1) By a disclosure of all the facts which the absent witnesses are expected to testify to, the materiality of said testimony, and that said facts can be proved by no witness in attendance upon the court;

(2) By a disclosure of facts and circumstances, a probability that the witnesses may be had at the time to which the trial is deferred; and

(3) Such a showing of fruitless effort to obtain the witnesses and such an explanation of their absence as to establish the exercise of due diligence.

Art. 327. Every motion for a continuance shall be tried summarily and contradictorily with the opposite party, and unless the evidence shows to the satisfaction of the court that mover is entitled to a continuance, the court shall order the trial to be proceeded with forthwith.

Art. 328. No continuance shall be indefinite, but the judge shall, in granting the continuance, fix the date upon which the trial shall be proceeded with.

Art. 329. In all criminal cases, whenever either the district attorney or the defendant asks for a continuance on the ground of the absence of a material witness, the other shall be entitled to an immediate trial on admitting that, if said witness were present, he would testify as stated in the affidavits made for a continuance, but in no case shall either the State or the defendant be required, in order to obtain a trial, to admit that the statements made in the affidavit for a continuance are true; provided that in no event shall any defendant be forced to trial until he shall have had the benefit of compulsory process for securing the attendance of his witnesses

Art. 330. No court shall review either under its appellate or supervisory jurisdiction any ruling on an application for a continuance.

TITLE XXII.

OF NOLLLE PROSEQUI.

Art. 331. A nolle prosequi is a declaration made by the district attorney and filed in open court, that he will no longer prosecute a particular indictment or some offense in such indictment charged.

Art. 332. A nolle prosequi simply discharges a particular indictment or part thereof, and is no bar to a subsequent prosecution prosecution for the offense as to which the nolle prosequi was entered.

Art. 333. The exercise of the power to enter a nolle prosequi by a district attorney is subject to the control and sanction of the court in which the case is pending and he shall either verbally or in writing explain the reasons for the nolle prosequi when called upon to do so by the court, who may then either approve the nolle prosequi or refuse to permit the same.

Art. 334. After the indictment has been read to the jury the district attorney is without authority to enter a nolle prosequi over the objection of the accused.

Art. 335. After conviction the district attorney can enter a nolle prosequi only in the following cases:

1. When a new trial has been granted or a motion in arrest of judgment has been sustained.

2. When the indictment is so defective that no judgment can be pronounced on the verdict;

3. When the accused has been found guilty on several counts of an indictment, the district attorney may enter a nolle prosequi as to such of these counts as are fatally defective and demand sentence on the good counts.

TITLE XXIII.

OF THE TRIAL AND ITS INCIDENTS.

CHAPTER 1.

OF HOW THE TRIAL BEGINS, PROGRESSES AND CLOSES.

Art. 336. The trial begins the moment the first juror is called for qualification and in cases tried by the judge alone, the moment the first witness has been sworn.

Art. 337. The jury having been empanelled and the indictment read, the trial shall proceed in the following order:

The reading of the plea to the jury; the opening statement of the district attorney explaining the nature of the charge and the evidence by which he expects to establish the same; the opening statement by counsel for the defendant at his option explaining the defense and the evidence by which he expects to prove the same; the introduction by the District Attorney of all the evidence upon which he relies for a conviction; the introduction by the defendant of all of his evidence; the introduction by the district attorney of the rebuttal evidence; the argument of the district attorney of those matters upon which he relies for a conviction; the argument by the defendant or by his counsel; the reply by the district attorney to the argument of the defense; the judge's charge to the jury; the retiring of the jury under the custody of the sheriff; the rendition of the verdict or the entry of a mistrial, as the case may be; the discharge of the jury.

Art. 338. The trial in jury cases is closed by the discharge of the jury; the trial before the judge alone is closed by the submission of the plea to him for adjudication.

CHAPTER 2.

OF PROCEEDING WITH THE TRIAL ON LEGAL HOLIDAYS.

Art. 339. Whenever the empanelling of a jury on the trial of any case shall have been begun, but not concluded, at the time at which there intervene any legal holiday or

legal half-holiday, it shall be within the discretion of the presiding judge to order said trial to be proceeded with upon said legal holiday, if not Sunday or Christmas Day, or upon said legal half-holiday, and all proceedings thereafter had in the trial of said case shall have the same force and effect as though had on a day not a legal holiday or legal half-holiday.

CHAPTER 3.

OF PROCEEDING WITH THE TRIAL UPON CERTIFIED COPY.

Art. 340. The judge shall, upon proof of the loss, destruction or abstraction from the court of any indictment, information, or bail bond, order that a certified copy from the judicial record of such lost, destroyed or abstracted document shall be substituted for the original and that the trial and all further proceedings in the cause be had as on the original.

CHAPTER 4.

OF CASES TRIABLE BY JURY AND OF THOSE TRIABLE BY THE JUDGE.

Art. 341. Whenever the indictment charges any capital offense, whether there be or be not counts charging offenses not capital, the trial shall be by a jury of twelve, all of whom must concur for the finding of a verdict.

Art. 342. Whenever the indictment does not charge a capital offense, but does charge a felony necessarily punishable with imprisonment at hard labor, the trial shall be by a jury of twelve, nine of whom must concur for the finding of any verdict.

Art 343. Whenever the indictment charges neither a capital offense nor one necessarily punishable with imprisonment at hard labor, but does charge a felony, punishable with imprisonment with or without hard labor, the trial shall be by a jury of five (unless the accused expressly waive trial by jury), all of whom must concur for the finding of any verdict.

Art. 344. Every misdemeanor shall be triable by the judge without the intervention of a jury.

Art. 345. Whenever the offense charged in the indictment is capital, or necessarily punishable with imprisonment at hard labor, the defendant cannot waive trial by jury; in all other cases he may elect to be tried by the judge alone.

CHAPTER 5.

OF EMPANELLING THE JURY.

Art. 346. The venire is the body of persons selected to serve as jurors during a certain designated term; the panel is the jury selected, empanelled and sworn to try a particular case.

Art. 347. Subject to the provisions of this chapter, the defendant has the right to demand that all jurors in the regular venire shall be tendered for acceptance or rejection at the trial of his case.

Art. 348. It is within the discretion of the judge to excuse for cause jurors of the regular venire.

Art. 349. Before going to trial the prosecution or the defense may demand attachment for all jurors of the regular venire who are absent, but if there be enough jurors present to make up the panel such attachments cannot be demanded of right.

Art. 350. When the regular venire has been exhausted without completing the panel, the judge shall, if the prosecution or the defense so request, order the sheriff to call the absent jurors at the court house door, before it shall be permissible to tender any talesman.

Art. 351. Tales jurors may be summoned at such time and in such manner as the judge may deem expedient, but cannot be tendered until the regular venire has been exhausted.

Art. 352. Examination of prospective jurors shall be by the judge alone. If counsel on either side desires that additional matter be inquired into, he shall state the matter to the judge and the judge, if the matter is proper, shall conduct the examination; provided, that neither the prosecution nor the defense shall be deprived of the right to challenge individual jurors peremptorily or for cause.

Art. 353. Causes for challenge are general or special: general, when the juror lacks some qualification required by law of jurors in general; special, when the juror, though generally qualified, is disqualified from serving in the particular case in which he is tendered.

Art. 354. The special causes for which a juror may be challenged are:

1. That he is not impartial, the cause of his bias being immaterial; but an opinion as to guilt or innocence of the accused, which is not fixed, or has not been deliberately formed, or that would yield to evidence, or that could be changed, does not disqualify the juror;

2. That the relations, whether by blood, marriage, employment, friendship or enmity, between the juror and the accused, or between the juror and the person injured, are such that it must be reasonably believed that they would influence the juror in coming to a verdict;

3. That the juror served on the grand jury which found the indictment, or on a petit jury which once tried the defendant for the same offense, or on the coroner's jury that investigated the homicide charged against the accused.

Art. 355. It is good cause for challenge on the part of the prosecution, but none on the part of the defense,

1. That the juror is biased against the enforcement of the statute charged to have been violated, or is of the fixed opinion that the statute is unconstitutional; or

2. That the juror tendered in a capital case has conscientious scruples against the infliction of capital punishment; or

3. That the juror would not convict upon circumstantial evidence.

Art. 356. No defendant can complain of any ruling sustaining or refusing to sustain a challenge for cause, unless his peremptory challenges shall have been exhausted before the completion of the panel; moreover, the erroneous allowance of challenges for cause affords the defendant no ground of complaint, unless the effect of such ruling is the exercise by the prosecution of more peremptory challenges

than it is entitled to by law, or unless the defendant by such ruling is forced to accept an obnoxious juror.

Art. 357. In all trials for any crime punishable with death, or necessarily with imprisonment at hard labor, the defendant shall be entitled to challenge peremptorily twelve jurors, and the prosecution twelve. In all other criminal cases the defendant shall have six peremptory challenges and the State six; and in all cases where there are several defendants they shall be deemed a single party for the purpose of all challenges under this article; provided, that in any case where the number of defendants shall exceed the number of challenges allowed by this article, and the defendants shall refuse to act together in making their peremptory challenges, the court may, in its discretion, allow to each defendant not more than one peremptory challenge.

Art. 358. The incompetency of a juror, from whatever cause arising, must be urged before the juror is sworn in, and can not be set up for the first time after verdict unless the juror should have answered falsely on his examination as to the special disqualification subsequently set up by the accused.

Art. 359. Every juror, before being examined by the judge, shall be sworn to truly answer such questions as may be propounded to him, but he cannot be forced to answer any question tending to criminate him, or to disgrace him. or to render him infamous.

Art. 360. The purpose of the examination of jurors by the judge is to ascertain the qualifications of the juror in the trial of the case in which he has been tendered, and the examination shall be limited to that purpose.

Art. 361. The jurors shall be tendered first to the prosecution, and, if accepted, then tendered to the defense. After a juror has been accepted by both sides, neither side has the right to challenge him peremptorily, but it shall be within the discretion of the court, and not subject to review to allow either side to peremptorily challenge jurors up to the time that the jury is empanelled.

Art. 362. Although a juror may have been accepted by both the prosecution and the defense, he may, none the

less, up to the beginning of the taking of evidence, be challenged for cause by either side, or be excused either for cause or by consent of both sides.

Art. 363. If, after a juror has been accepted and sworn, it be discovered that he is incompetent to serve, the judge may, in the exercise of a sound discretion, at any time before evidence has gone to the jury, order such juror to be set aside and the panel to be completed in the ordinary course.

Art. 364. The following oath shall be administered to the jurors: "You will well and truly try, and true deliverance make, between the State of Louisiana and the prisoner at the bar, whom you shall have in charge, and a true verdict give, according to the law and the evidence, so help you God."

Art. 365. Any attempt to influence the action of a juror, before or after he is accepted and sworn, either by persuasion, threats, the payment of money or the giving of anything of value or by asking him to give the defendant the benefit of the doubt, or by any other means, is hereby declared to be an offense and shall be punished by imprisonment with or without hard labor for not less than six (6) months or more than two (2) years, at the discretion of the court.

Art. 366. When a juror has been accepted and sworn and the Court has permitted the jury to separate, it shall be unlawful for anyone to cause said juror to be watched, followed, or shadowed by detectives or other persons, whether said espionage is for the purpose of unduly influencing said juror or not, and to so watch, follow or shadow a juror, or to cause it to be done, is hereby made an offense punishable by imprisonment with or without hard labor, for not less than six (6) months or more than two (2) years, at the discretion of the court.

CHAPTER 6.

OF THE RIGHT TO AMEND THE INDICTMENT.

Art. 367. Whenever, on or before the trial of any indictment, there shall appear to be any variance between

the statement in the indictment and the evidence offered in proof thereof, in the name of any parish, city or place mentioned or described in such indictment; or in the name or description of any person, body politic or corporate, therein stated or alleged to be the owner of any property, real or personal which shall form the subject of any offense charged therein; or in the name or description of any person, body corporate or politic, therein stated or alleged to be injured or damaged or intended to be injured or damaged by the commission of such offense; or in the Christian name or surname, or both Christian name and surname, or other description whatsoever, of any person whomsoever therein named or described; or in the name or description of any matter or thing whatsoever therein named or described; or in the ownership of any property named or described therein, it shall be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense, to order such indictment to be amended according to the proof, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend; the trial to be had before the same or another jury, as the court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects as if no such variance had occurred or amendments been made; provided, that in all such cases where the trial shall be postponed, the witnesses shall be bound to attend to prosecute and give evidence respectively, and the defendant shall be bound to attend to be tried, at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in the same manner as they were originally bound by their respective recognizances to appear and prosecute or give evidence at the time and place to which such trial shall have been postponed.

CHAPTER 7.

OF THE ORDER AND METHOD OF EXAMINING WITNESSES.

Art. 368. The accused shall have the right to be confronted with the witnesses against him and the depositions of witnesses shall not be evidence either for or against him except in the cases provided for in this Code.

Art. 369. Before any witness shall be permitted to testify he shall be sworn to truthfully answer such questions as may be propounded to him.

Art. 370. In any case in which the judge of the court may be a material witness, the oath shall be administered to him by any officer authorized by law to administer oaths.

Art. 371. Though no party can be controlled in the order in which he shall introduce his evidence, yet, whenever the evidence sought to be introduced requires a foundation for its admission, such foundation must be laid before the evidence is admissible.

Art. 372. In the discipline of his court the trial judge is vested with a sound discretion to stop the prolonged, unnecessary and irrelevant examination of a witness, whether such examination be direct or cross, and even though no objection be urged by counsel.

Art. 373. It is within the sound discretion of the trial judge to permit or to refuse to permit the prosecution or the defense to bring additional testimony after the evidence has been closed, provided that no additional evidence shall be heard after the argument has begun or the charge been given.

Art. 374. The judge may, at any stage of the trial, order the sequestration of the witnesses. As soon as such order shall have been given it shall be the duty of the sheriff to take charge of the witnesses and to remove them to a place where they shall not be able to see or hear any of the proceedings taking place in court. Nor shall there be, while they shall be sequestered, any communication between them and others or between them and any witness who shall have testified. Any disregard of these provisions by a witness shall disqualify him from testifying and shall subject

him to punishment for contempt; provided, that the judge may in all cases, in his discretion, permit any witness to testify; provided, further, that the issuance of such order shall not deprive either party of the right of calling or examining as a witness one who shall not have obeyed the order of sequestration, when such party shall show that the witness remained in court or otherwise disobeyed the order without the knowledge and without the connivance of the party calling him.

Art. 375. No witness can be forced to criminate himself, but the judge is not bound by the witness' statement that the answer would criminate him, when from the nature of the question asked and the circumstances of the case such statement cannot be true.

Art. 376. A leading question is one which suggests to the witness the answer he is to deliver, and though framed in the alternative, is inadmissible when propounded to one's own witness, unless such witness be unwilling or hostile.

Art. 377. Neither upon direct nor cross-examination is it permissible to propound a question which assumes as true that which the jury alone are charged with finding, or which assumes as proven facts which have not been proven, or which assumes that particular answers have been given that have not been given.

Art. 378. A witness may be allowed to refresh his memory by reference to his testimony given on the preliminary examination, or at a coroner's inquest, or on a previous trial, or, for the purpose of refreshing his present memory a witness may examine memoranda, and it is immaterial by whom or when the memoranda was made, provided, that, after such inspection, the witness can testify to the fact.

Art. 379. When a witness has been intentionally sworn and has testified to any single fact in his examination in chief, he may be cross-examined upon the whole case.

Art. 380. The re-direct examination must be confined to the subject-matter of the cross-examination and to the explanation of statements elicited on cross-examination; but the application of this rule is within the discretion of

the trial judge, provided that the opportunity be not denied to recross on the new matter brought out on the re-direct.

Art. 381. The prosecution has the right to rebut the evidence adduced by the defendant, but the defendant is without right to rebut the prosecution's rebuttal.

Art. 382. The purpose of rebuttal evidence being to disprove, not to prove, the district attorney should offer at once and before the introduction of any evidence by the defendant all of the testimony upon which he relies for conviction, but the application of this rule must rest in the sound discretion of the trial judge.

CHAPTER 8.

OF THE ARGUMENT.

Art. 383. The right to open and close the argument belongs to the prosecution, but the closing argument shall be confined to answering the argument of the defense.

Art. 384. Counsel may argue to the jury both the law and the evidence of the case, but must confine themselves to matters as to which evidence has been received, or of which judicial cognizance is taken, and to the law applicable to the evidence; and counsel shall refrain from any appeal to prejudice, but may comment upon the failure of the accused to testify.

Art. 385. Counsel have the right to draw from the evidence received, or from the failure of the accused to testify, or from the failure to produce evidence shown to be in the possession of the opposite party, any conclusion which to them may seem fit, but counsel have no right to draw from such evidence or suppression of evidence an incorrect conclusion of law.

CHAPTER 9

OF CHARGING THE JURY.

Art. 386. The jury shall be the judges of the law and of the facts on the question of guilt or innocence.

Art. 387. It belongs to the jury alone to determine the weight and credibility of the evidence, but the judge

shall have the right to instruct the jury, both on the law and on the facts, and to make just and proper comments on the weight and sufficiency of the evidence and the credibility of the witnesses.

Art 388. The judge shall charge the jury upon every phase of the case upon which any legal evidence pertinent to the issue shall have been given, whether he believes such evidence to be true or not, or whether he attaches any importance to it or not. He shall not be required to charge upon matters as to which no evidence shall have been given, though when evidence which it is within the power of a party to produce shall not have been produced the judge shall charge the jury upon any legal presumption arising from such failure to produce. He shall also charge the jury that it is their duty to accept and to apply the law as laid down for them by the judge.

Art. 389. Whenever the indictment sets out an offense including other offenses of lesser magnitude or grade, the judge shall charge the jury upon such lesser offenses only in so far as there is evidence upon which to base such charge, provided that in all trials for murder the jury shall be instructed that they may find the accused guilty of manslaughter.

Art. 390. The judge shall charge the jury, that every person accused of crime is presumed by law to be innocent until his guilt shall have been established beyond a reasonable doubt; that it is the duty of the jury, in considering the evidence and in applying to that evidence the law as given by the court, to give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the want of evidence in the case, and that, if not convinced of his guilt, beyond a reasonable doubt, it is their duty to find him not guilty; and whenever it is proper to charge the jury as to the several grades of the offense set out in the indictment, the judge shall charge the jury that, if they have a reasonable doubt as to the grade of the offense committed by the defendant it is their duty to find him guilty only of that grade of which they are convinced beyond a reasonable doubt he is guilty.

Art. 391. The judge may but shall not be required to define "the presumption of innocence" or "reasonable doubt", or to give any other or further charge upon the same than that contained in the next preceding article.

Art. 392. The judge shall deliver his charge in writing, whenever requested so to do either by the prosecution or the defense prior to the swearing of the first witness.

Art. 393. The prosecution and the defense have each the right to present to the court, before the argument has begun, any written charge or charges, and request that the same be given. Except as otherwise provided herein, the judge must give every such requested charge that is wholly correct and wholly pertinent, unless the matter contained in such charge have been already given, or unless such charge require qualification, limitation or explanation.

Art. 394. Every objection to the charge given or to a refusal to charge as requested, or to a refusal to give the charge in writing, shall be by means of a bill of exceptions reserved before the jury shall have retired to deliberate upon their verdict, and shall be accompanied by such a statement of facts as shall show the error in the charge given, or in the refusal to charge as requested, or that the request to give the charge in writing was refused.

Art 395. No charge to the jury shall be given out of the presence of the defendant, or, if represented by counsel, out of the presence of his counsel.

Art. 396. Whenever a case shall be tried before a judge without the intervention of a jury it shall be competent for counsel on each side to present to the court for its consideration propositions in the same manner as charges would be presented were the case tried by the jury, and counsel shall have the right to demand the ruling of the court on such propositions, and to reserve bills of exceptions to such rulings in the same manner as would be done were the case tried before a jury.

CHAPTER 10.

OF THE CUSTODY AND DISCHARGE OF THE JURY BEFORE VERDICT.

Art. 397. From the moment of the acceptance of any juror until the rendition of verdict or the entry of a mistrial, as the case may be, the jurors shall be kept together under the charge of an officer in such a way as to be secluded from all outside communication; provided that in cases not capital the judge may, in his discretion, permit the jurors to separate at any time before the actual delivery of his charge.

Art. 398. In reaching a verdict the jurors must rely upon their memories, and they shall not be allowed, when they retire from the court room, access to any written evidence or to any notes of the testimony of any witness, but they may take with them when they retire to deliberate any object or document received in evidence that requires a physical examination to enable them to arrive at a just conclusion.

Art. 399. Should the jury or any member thereof, after having retired to deliberate upon the verdict, wish further instructions, the officer in charge shall bring the jury into court, and the judge shall, in the presence of accused, his counsel, if he have counsel, and the district attorney, further instruct the jury, provided such further instructions may be verbal.

Art. 400. The judge may, without the consent of the defendant, discharge the jury though no verdict has been rendered, and order the entry of a mistrial, whenever satisfied after the jury has deliberated, that the jurors will be unable to agree, or whenever any cause exists which would warrant the setting aside of the verdict were the case allowed to go on and a verdict to be rendered.

CHAPTER 11.

OF THE VERDICT.

Art. 401. When a verdict has been agreed upon, the officer in charge of the jury shall bring the jurors into

court, and the jury shall thereupon through its foreman, selected by itself, deliver its verdict which may be oral or in writing.

Art. 402. Every verdict shall be rendered in open court and in the presence of the defendant, provided that the verdict may be rendered, received and recorded in the absence of the defendant when he voluntarily absents himself, and fails to appear after the sheriff's proclamation to come and hear the verdict about to be rendered.

Art. 403. If the verdict, delivered orally, be correct in form and responsive to the indictment, the judge shall order the clerk to receive and record the verdict and to discharge the jury.

Art. 404. If the verdict, delivered in writing, be correct in form and responsive to the indictment, the judge shall order the clerk to receive the verdict, to read it to the jury, and to ask: "Is that your verdict?" If the jury answer "Yes", the judge shall order the clerk to record the verdict and to discharge the jury.

Art. 405. If the verdict be incorrect in form or not responsive to the indictment, the judge shall refuse to receive it, and shall remand the jury, with oral instructions as to what verdicts are permissible and as to proper form.

Art. 406. The refusal of the judge to receive a verdict responsive to the indictment, whether such verdict be or be not justified by his charge to the jury, is good ground for the plea of former jeopardy, provided defendant insists upon his discharge and does not himself bring on a new trial.

Art. 407. The receiving and recording of a verdict are ministerial acts and may take place on any legal holiday or legal half-holiday.

Art. 408. The verdict must be responsive to the indictment, that is to say, no one can be found guilty of an offense not charged in the indictment or not necessarily included in the offense charged; and no verdict can be of any effect if found upon an indictment so defective as to charge no crime.

Art. 409. When the crime charged includes another of lesser grade, a verdict of guilty of the lesser crime is responsive to the indictment, and it is of no moment that the greater offense is a felony and the lesser a misdemeanor.

Art. 410. Whenever larceny, embezzlement, obtaining by false pretenses or swindling is charged in an indictment, a verdict of guilty of any one of these offenses is responsive; provided, the verdict of guilty shall not be for a greater offense than is within the jurisdiction of the judge or jury.

Art. 411. Upon the plea of not guilty, the jury may find no other verdict than one of not guilty or one of guilty of some offense contained in the indictment.

Art. 412. In all capital cases the jury may qualify its verdict of guilty with the addition of "without capital punishment," in which case the punishment shall be imprisonment at hard labor for life.

Art. 413. In any case, not capital, any qualification of or addition to a verdict of guilty, beyond a specification of the crime as to which the verdict is found is without effect upon the finding.

Art. 414. A verdict of "guilty," without specification means, except as otherwise provided in this chapter, that all the defendants on trial are guilty as charged in each count of the indictment; but if the verdict designates upon which count or counts any defendant is found guilty, it means that he is not guilty upon the other counts.

Art. 415. A verdict of "not guilty" means that none of the defendants on trial is guilty of any offense charged in any count of the indictment.

Art. 416. When an indictment charges in separate counts higher and lower grades of the same offense, a verdict of "guilty," without specification, means guilty of the highest grade of the offense charged in the indictment.

Art. 417. When it is the intention of the jury to return different findings as to the several defendants on trial, the verdict must name each defendant and the finding as to him.

Art. 418. In all cases in which the accused shall have been convicted of a felony, he shall be remanded to jail to await sentence; in all cases in which he shall have been convicted of a misdemeanor, he shall be entitled to be discharged on bail to await sentence.

Art. 419. The judge shall, upon the request either of the prosecution or of the defense, order the jury to be polled before being discharged.

Art. 420. Polling the jury consists in the clerk's calling each juror, one at a time, by name, announcing to him the verdict that has been returned, asking him, "Is that your verdict?" and receiving his oral answer to that question. If the number required by law for the finding of a verdict answer "Yes," the jury shall be discharged, otherwise it shall be remanded to deliberate upon a verdict.

Art. 421. All averments imperfectly stated in the indictment are cured by verdict, but the omission from the indictment of any essential averment constitutes an incurable defect.

Art. 422. The verdict upon any other plea than that of not guilty shall be "Plea sustained" or "Plea not sustained."

Art. 423. All provisions of this chapter regulating the form and effect of verdicts shall apply equally to the findings by the judge upon pleas tried by him without a jury.

Art. 424. When the error in the proceedings complained of is discoverable only by the taking of evidence, the method of setting aside the verdict is by means of a new trial; when the error is patent upon the face of the papers, the method is by an arrest of judgment or by an assignment of errors.

TITLE XXIV.

OF EVIDENCE.

CHAPTER 1.

OF THINGS THAT NEED NOT BE PROVED, OF PRIMA FACIE EVIDENCE, AND OF PRESUMPTION.

Art. 425. Judicial cognizance is taken of the following matters:

1. The laws of this State and of the United States, whether public or private, but not municipal or parochial ordinances;

2. The Proclamation of the Governor of this State and of the President of the United States;

3. The seals of all the courts of this State and of the United States;

4. The accession to office and the official signatures and seals of the public officers of this State and of the United States;

5. The existence, title, national flag and seal of every foreign country and sovereign recognized by the Executive of the United States;

6. The laws of nature, the measure of time, the facts disclosed by the calendar, the facts of geography, the geographical and political divisions of the world, the facts of history and the political, social and racial conditions prevailing in this State;

7. The matters pending in the court taking such cognizance and who are its attorneys.

Art. 426. The list of the registered physicians and surgeons in this State published by the State Board of Health and duly certified by the Secretary of said Board shall be received by the Courts of the State as proof that the physicians and surgeons therein named are duly registered as required by law, provided that this method of proof shall not be considered exclusive.

Art. 427. The published statutes and digests of the other states and territories shall be prima facie evidence of

the statute laws of the state or territory from which they purport to emanate, without being filed in evidence.

Art. 428. The report of every Commission of Lunacy shall be prima facie evidence of the facts recited in such report and of the correctness of the findings of such commission.

Art. 429. A copy of the articles of any vessel, authenticated by the affidavit of the captain, shall be prima facie evidence that any seaman whose name appears subscribed thereto has actually signed articles.

Art. 430. Whenever any commercial paper shall have been protested, either in or out of this State, for non-payment, the act of protest, or a certified copy thereof, shall be prima facie evidence of the facts recited in said act.

Art. 431. Whenever any check or draft shall have been drawn on any bank, whether such bank be in or out of this State, and payment shall have been refused, such check or draft with its endorsements shall be prima facie evidence, that at the time of the presentation of said check or draft, the drawer did not have the money in said bank with which to pay said check or draft.

Art. 432. On trial of any criminal case it shall not be necessary to prove the incorporation of any corporation mentioned in the indictment, unless the defendant, before entering upon such trial, shall have filed his affidavit specifically denying the existence of such corporation.

Art. 433. In all criminal prosecutions for the violation of any law relative to the employment of children or young persons, a copy of the registry of the birth, baptism or circumcision of such child or young person, duly certified to by the person in whose custody such registry may be kept, shall be prima facie evidence of the truth of the facts recited in such certified copy.

Art. 434. The failure, neglect or refusal on the part of any public officer to pay over, at the time and in the manner required by law and to the authority designated by law to receive such payment, any public money in his hands, shall be prima facie evidence of the embezzlement by such public officer of any public money not so paid over.

Art. 435. A legal presumption relieves him in whose favor it exists from the necessity of any proof; but may none the less be destroyed by rebutting evidence; such is the presumption attaching to the regularity of judicial proceedings; that the grand jury was legally constituted; that public officers have done their duty; that a relation or subject-matter once established, continues, but not that it pre-existed; that the defendant intended the natural and probable consequence of his act; that the defendant is innocent; that the defendant is sane and responsible for his actions; that the person in the unexplained possession of property recently stolen is the thief; that evidence under the control of a party and not produced by him was not produced because it would not have aided him; that the witnesses have told the truth.

Art. 436. A conclusive presumption is one against which no proof can be admitted, such as the presumption that attaches to res adjudicata, to the recitals contained in legislative acts and to the official journals of legislative proceedings.

CHAPTER 3.

OF THE GENERAL RULES OF EVIDENCE.

Art. 437. Hearsay evidence is inadmissible, except as otherwise provided in this Code.

Art. 438. The evidence must be relevant to the material issue.

Art. 439. The best evidence which from the nature of the case must be supposed to exist, and which is within a party's control, must be produced.

Art. 440. Matters which can be proved only by written evidence cannot be established by parol; but the contents of a document may be proved by parol, if its loss or destruction be shown, or if it is in the possession of the adverse party and he fails to produce it after reasonable notice.

Art. 441. The rule as to circumstantial evidence is: assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence.

Art. 442. The burden of proof is upon him alleging the existence of a fact.

Art. 443. Positive testimony on a given point must be given greater weight than negative testimony on the same point.

CHAPTER 4.

OF RELEVANCY.

Art. 444. Relevant evidence is that tending to show the commission of the offense and the intent, or tending to negative the commission of the offense and the intent.

Facts necessary to be known to explain a relevant fact, or which support an inference raised by such fact, are admissible.

Art. 445. The relevancy of evidence must be determined by the purpose for which it is offered; and when evidence has been excluded when offered for one purpose, but admitted when offered for another, its effect must be restricted to the purpose for which admitted, but no one can be heard to establish a fact for one purpose and deny it for another.

Art. 446. In all prosecutions for libel, the truth thereof may be given in evidence.

CHAPTER 5.

OF KNOWLEDGE AND INTENT.

Art. 447. If a statute has made it a crime to do a particular act, no further proof of intent is required than that accused voluntarily did the act; and any evidence that he did not know such act to be forbidden by law is inadmissible.

Art. 448. In order to show intent, evidence is admissible of acts independent of the act charged as a crime in the indictment, for though intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction.

Art. 449. When knowledge or intent forms an essential part of the inquiry, testimony may be offered of such

acts, conduct or declarations of the accused as tend to establish such knowledge or intent and where the offense is one of a system, evidence is admissible to prove the continuity of the offense, and the commission of similar offenses for the purpose of showing guilty knowledge and intent, but not to prove the offense charged.

CHAPTER 6.

OF RES GESTAE.

Art. 450. Res gestae are events speaking for themselves under the immediate pressure of the occurrence, through the instructive, impulsive and spontaneous words and acts of the participants, and not the words of the participants when narrating the events. What forms any part of the res gestae is always admissible in evidence.

Art. 451. To constitute res gestae the circumstances and declarations must be necessary incidents of the criminal act, or immediate concomitants of it, or form in conjunction with it one continuous transaction.

CHAPTER 7.

OF ADMISSIONS AND CONFESSIONS.

Art. 452. The term "admission" is applied to those matters of fact which do not involve criminal intent; the term "confession" is applied only to an admission of guilt, not to an acknowledgment of facts merely tending to establish guilt.

Art. 453. Every confession, admission or declaration sought to be used against any one must be used in its entirety, so that the person to be affected thereby may have the benefit of any exculpation or explanation that the whole statement may afford.

Art. 454. Before what purports to be a confession can be introduced in evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises.

Art. 455. No person under arrest shall be subjected to any treatment designed by effect on body or mind to compel a confession of crime.

Art. 456. A confession need not be the spontaneous act of the accused and may be obtained by means of questions and answers.

Art. 457. The rule that a confession produced by threat or promise is inadmissible in evidence does not apply to admissions not involving the existence of a criminal intent.

Art. 458. Where in an extra-judicial conversation between persons in the presence of an accused, not in custody, he is stated to have acknowledged a certain fact or to have done a certain thing, the fact that he does not deny the statement so made in his presence is to be construed as a tacit admission on his part of the truth of such statement, unless his silence be due to a reasonable cause.

Art. 459. Each co-conspirator is deemed to assent to or to commend whatever is said or done in furtherance of the common enterprise, and it is therefore of no moment that such act was done or such declaration was made out of the presence of the conspirator sought to be bound thereby, or whether the conspirator doing such act or making such declaration be or be not on trial with his co-defendant. But to have this effect a prima facie case of conspiracy must have been established.

CHAPTER 8.

OF DOCUMENTARY EVIDENCE.

Art. 460. Every authentic act, unless shown to be a forgery, makes full proof of its own execution, nor can the recitals of such act be contradicted by any party thereto; but no instrument under private signature is admissible in evidence, without proof of its genuineness.

Art. 461. A copy of a document, certified to by the officer who is the legal custodian of the same is equivalent to the original in authenticity; but the certificate of an

officer to any matter not under the general powers vested in him is no evidence at all.

Art. 462. The party relying upon a written instrument must, before such instrument is receivable in evidence, satisfactorily account for any erasure or interlineation which operates a substantial change of such instrument.

Art. 463. Whenever, during the trial of any criminal case, either party may desire to offer in evidence any record, paper or document belonging to the files or records of the court in which the trial is proceeding, the presiding judge shall, at the request of such party, direct the clerk to produce such record, document or paper, in order that the same may be used in evidence; and it shall not be necessary for the clerk in any such case to make a copy of such record, document or paper.

Art. 464. Any document, other than an authentic act, may be proved by any one who saw it written, or by a comparison of hands, or by any one who, from his knowledge of the handwriting of the person alleged to have written the document can testify that the document produced is in the handwriting of said person.

CHAPTER 9.

OF THE COMPETENCY OF WITNESSES.

Art. 465. The competent witness in any criminal proceeding, in court or before a person having authority to receive evidence, shall be a person of proper understanding, but; First. Private conversations between husband and wife shall be privileged. Second. Neither husband nor wife shall be compelled to be a witness on any trial upon an indictment, complaint or other criminal proceeding, against the other. Third. In the trial of all indictments, complaints and other proceedings against persons charged with the commission of crimes or offenses, a person so charged shall, at his own request, but not otherwise, be deemed a competent witness.

Art. 466. When a person accused, or a husband or wife becomes a witness, such witness shall be subject to all

the rules that apply to other witnesses, and may be cross-examined upon the whole case.

Art. 467. Except as otherwise provided in this Code, the witness can testify only as to facts within his knowledge, and neither as to any recital of facts heard by him, nor as to any impression or opinion that he may have.

Art. 468. On questions involving a knowledge obtained only by means of a special training or experience the opinions of persons having such special knowledge are admissible as expert testimony.

Art. 469. Every expert witness must state the facts upon which his opinion is based.

Art. 470. The test of the competency of an expert is his knowledge of the subject about which he is called upon to express an opinion, and before any witness can give evidence as an expert his competency so to testify must have been established to the satisfaction of the court.

Art. 471. The fact that a witness called as an expert is not competent to give expert testimony does not affect his competency to testify as to matters not requiring expert knowledge.

Art. 472. Any person may be compelled to testify in any lawful proceeding against another charged with bribery, and shall not be permitted to withhold his testimony upon the ground that it may criminate him or expose him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

Art. 473. Understanding, and not age, must determine whether any person tendered as a witness shall be sworn; but no child less than twelve years of age shall, over the objection either of the district attorney or of the defendant, be sworn as a witness, until the court is satisfied, after examination, that such child has sufficient understanding to be a witness.

Art. 474. No juror, grand or petit, is competent to testify to his own or his fellows' misconduct, or to give evidence to explain, qualify or impeach any indictment or any verdict found by the body of which he is or was a member;

but every juror, grand or petit, is a competent witness to rebut any attack upon the regularity of the conduct or of the findings of the body of which he is or was a member.

Art. 475. No grand juror or district attorney is competent to testify as to any thing that took place before the grand jury during its sessions, or to testify upon what evidence any indictment was found, or that it was found upon insufficient evidence, or without evidence; but the grand jurors and the district attorney are competent witnesses both for the State and for the defense in any prosecution for perjury or false swearing, alleged to have been committed before the grand jury.

Art. 476. A public officer cannot be examined as a witness for the purpose of contradicting his official acts but is competent to rebut any attack made upon such acts.

Art. 477. A notary public or other public officer can be examined as a witness, neither for the purpose of strengthening the recitals of a document certified to by himself, nor of contradicting the same.

Art. 478. When several persons are on trial at the same time, under the same indictment, though each may be a witness on his own behalf, none of them can be a witness on behalf of his co-defendants.

Art. 479. No legal adviser is permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication made to him as such legal adviser by or on behalf of his client, or any advice given by him to his client, or any information that he may have gotten by reason of his being such legal adviser.

Art. 480. No physician is permitted, whether during or after the termination of his employment as such, unless with his patient's express consent, to disclose any communication made to him as such physician by or on behalf of his patient, or the result of any investigation made into the patient's physical or mental condition, or any opinion based upon such investigation, or any information that he may have gotten by reason of his being such physician; provided,

that the provisions of this article shall not apply to any physician, who, under the appointment of the court, and not by a selection of the patient, has made investigation into the patient's physical or mental condition; provided, further, that any physician may be cross-examined upon the correctness of any certificate issued by him.

Art. 481. No clergyman is permitted, without the consent of the person making the communication, to disclose any communication made to him in confidence by one seeking his spiritual advice or consolation, or any information that he may have gotten by reason of such communication.

Art. 482. The right to exclude the testimony, as provided in the three articles last preceding, is purely personal, and can be set up only by the person in whose favor the right exists. If the right is waived, the legal adviser, the physician and the clergyman, as the case may be, may be examined and cross-examined to the same extent as any other witness.

CHAPTER 10.

OF CHARACTER EVIDENCE.

Art. 483. Character, whether good or bad, depends upon the general reputation that a man has among his neighbors, not upon what particular persons think of him.

Art. 484. Evidence of the good character of accused is always admissible in his behalf, and must be considered in connection with and as a part of the whole testimony and due weight be given it, but it cannot destroy conclusive evidence of guilt; and such evidence must be restricted to showing character as to such moral qualities as have pertinence to the crime with which he is charged.

Art. 485. The State is permitted to introduce testimony of the bad character of the accused only in rebuttal of the evidence introduced by him to show good character.

Art. 486. In the absence of proof of hostile demonstration or of overt act on the part of the person slain or injured, evidence of his dangerous character or of his threats against accused is not admissible.

Art. 487. No other investigation into the character of a witness is permissible except such as affects his credibility.

CHAPTER 11.

OF IMPEACHING AND CORROBORATIVE EVIDENCE.

Art. 488. Before a witness has been sworn he can be neither corroborated nor impeached, nor is testimony to establish the credibility of a witness admissible until that credibility has been attacked.

Art. 489. Whenever a witness has been impeached or contradicted, or his character or credibility been assailed, corroborative testimony is admissible, and the testimony of an accomplice may be corroborated even before it is attacked.

Art. 490. Each side has the right to impeach the testimony and the credibility of every witness sworn on behalf of the other side.

Art. 491. No one can impeach his own witness, unless he have been taken by surprise by the testimony of such witness, or unless the witness show hostility toward him, and, even then, the impeachment must be limited to evidence of prior contradictory statements.

Art. 492. "Surprise" in the sense of the last preceding article does not arise out of the mere failure of the witness to testify as expected, but out of his testifying upon some material matter against the party introducing him and in favor of the other side.

Art. 493. It does not impeach one's own witness to introduce other witnesses who testify contrary to such witness.

Art. 494. The credibility of a witness may be attacked generally, by showing that his general reputation for truth or for moral character is bad, or it may be attacked only insofar as his credibility in the case on trial is concerned.

Art. 495. When general credibility is attacked, the inquiry must be limited to general reputation, and cannot go into particular acts, vices or courses of conduct.

Art. 496. When the purpose is to show that in the special case on trial the witness is biased, has an interest, or has been corrupted, it is competent to question him as to any particular fact showing or tending to show such bias, interest or corruption, and unless he distinctly admit such fact, any other witness may be examined to establish the same.

Art. 497. Whenever the credibility of a witness is to be impeached by proof of any statement made by him contradictory to his testimony, he must first be asked whether he has made such statement, and his attention must be called to the time, place and circumstances, and to the person to whom the alleged statement was made, in order that the witness may have an opportunity of explaining that which is prima facie contradictory. If the witness does not distinctly admit making such statement, evidence that he did make it is admissible.

Art. 498. It is not competent to impeach a witness as to collateral facts or irrelevant matter.

Art. 499. Evidence of conviction of crime, but not of arrest, indictment or prosecution, is admissible for the purpose of impeaching the credibility of the witness. But before evidence of such former conviction can be adduced from any other source than the witness whose credibility is to be impeached, he must have been questioned on cross-examination as to such conviction, and have failed distinctly to admit the same; provided, always, that a witness, whether he be the defendant or not, may be compelled to answer on cross-examination whether or not he has ever been indicted or arrested and how many times.

Art. 500. When the testimony of a witness has been assailed as to a particular fact stated by him, similar prior statements, made at an unsuspicious time, may be received to corroborate his testimony.

Art. 501. Evidence of former consistent statements is inadmissible to sustain a witness who has been impeached by proof of former inconsistent statements, unless his testimony be charged to have been given under the influence of some improper or interested motive, or to be a recent fabri-

cation, in which case, in order to repel such imputation, it is proper to show that the witness made a similar statement at a time when the supposed motive did not exist and the effect of such statement could not be foreseen. But when a witness has been impeached by evidence of declarations inconsistent with his testimony, he cannot be corroborated by statements made subsequent to such declarations.

TITLE XXV.

OF THE BILL OF EXCEPTIONS.

Art. 502. The bill of exceptions is grounded on the objection made to the ruling of the court on some purely incidental question arising during the progress of the cause; and involves the correctness of the conclusions drawn by the court from the facts recited in the bill.

Art. 503. On the trial of all criminal cases, whenever a bill of exceptions shall be reserved to the ruling on any objection, the court shall at the time and without delay order the clerk or the stenographer to take down the facts upon which the objection and the ruling are based, together with the objection, the ruling and the reasons of the ruling, which statement, objection, ruling and reasons, so taken down, shall be preserved among the records of the trial, and shall, when signed, by the judge, constitute the bill of exceptions; provided that whenever a bill has been reserved the judge may be coerced by mandamus to sign the same.

Art. 504. The bill of exceptions must show the circumstances under which and the evidence upon which the ruling complained of is based; and the accused is without right to have taken down any evidence except that which is necessary as a basis for his bill; he cannot require that any evidence be taken down that appertains to guilt or innocence.

Art. 505. Whenever a bill of exceptions has been reserved in any criminal proceeding in which more than one

defendant is on trial, it shall be presumed, unless the contrary clearly appear, that the bill has been reserved by all the defendants on trial.

Art. 506. No error, not patent on the face of the record, can be availed of after verdict, unless objection shall have been made at the time of the happening of such error and unless at the time of the ruling on the objection a bill of exceptions shall have been reserved to such adverse ruling.

Art. 507. An error is patent on the face of the record when it is discoverable by the mere inspection of the pleadings and proceedings and without any inspection of the evidence, though such evidence be in the record.

Art. 508. Whenever necessary the trial judge shall append to the bill of exceptions a per curiam in order that the appellate court may be fully informed as to all of the circumstances pertaining to the questions raised by the bill. If the bill of exceptions requires no per curiam comment, the judge shall so certify at the foot of the bill at the time he signs the same.

TITLE XXVI.

OF THE MOTION FOR A NEW TRIAL.

Art. 509. Every defendant has the right to move for a new trial at any time after verdict, but such motion must be filed and disposed of before sentence.

Art. 510. A new trial cannot be ordered by the court on its own motion or upon the application of the State, but may be granted with the consent of the district attorney, whether the motion of defendant set out a valid reason for a new trial or not.

Art. 511. Every motion for a new trial must specify the grounds upon which relief is sought, must be tried contradictorily with the district attorney, and the proof must correspond with the allegations of the motion.

Art. 512. The motion for a new trial is based upon the supposition that injustice has been done the accused, and, unless such is shown to have been the case, the application shall be denied, no matter upon what allegations grounded.

Art. 513. A new trial ought to be granted:

1. Whenever the verdict is contrary to the law and the evidence; or

2. Whenever the bills of exception reserved during the proceedings show error committed to the prejudice of the accused; or

3. Whenever since verdict new material evidence has been discovered that could not have been discovered with reasonable diligence before or during trial; or

4. Whenever since verdict the accused has discovered errors or defects in the proceedings to his prejudice that could not have been discovered with reasonable diligence before verdict; or

5. Whenever, though as a matter of legal right the accused may not be entitled to a new trial, yet the judge is of the opinion that the ends of justice would be served by the granting of a new trial.

Art. 514. To avail as ground for a new trial, any irregularity in the proceedings, not patent on the face of the record, must be objected to at the time of its occurrence and a bill of exceptions be reserved to the adverse ruling of the court upon such objection. Failure to reserve a bill at the time of the ruling operates as a waiver of the objection and as an acquiescence in the ruling.

Art. 515. To entitle the accused to a new trial on the ground of newly discovered evidence, it must affirmatively appear that notwithstanding the exercise of reasonable diligence, the evidence was not known before or during the trial, but has been discovered since; that said evidence is not merely cumulative; that it does not merely corroborate or impeach the credibility or testimony of any witness examined on the trial; that it is so material that it ought to

produce a different result than the verdict reached, and that it is admissible. These allegations must be recited in the motion and be sworn to by the accused.

Art. 516. Besides the requirements of the last preceding article, the motion and affidavit must disclose the names of the newly discovered witnesses, the facts which each of these witnesses knows and will testify to, that these witnesses are not beyond the process of the court, and that there was no other witness previously known within the process of the court by whom said facts could have been established; and the motion and affidavit must show not only reasonable diligence to obtain the evidence after its discovery, but also reasonable diligence to discover the existence of the testimony.

Art. 517. The newly discovered whereabouts or residence of a witness does not constitute newly discovered evidence.

Art. 518. To entitle the accused to a new trial on the ground of errors or defects in the proceedings not discoverable until after verdict, it must affirmatively appear what these specific errors or defects are and that, notwithstanding the exercise of reasonable diligence, neither the accused nor his counsel discovered them before the verdict; and these allegations must be recited in the motion and be sworn to by the accused or by his counsel.

Art. 519. The effect of granting a new trial is to set at large everything connected with the trial, and merely to grant a re-trial of the case, with as little prejudice to either party as if it had never been tried.

Art. 520. Neither the appellate nor supervisory jurisdiction of the Supreme Court can be invoked to review the granting or the refusal to grant a new trial except for error of law.

TITLE XXVII.

OF THE MOTION IN ARREST OF JUDGMENT.

Art. 521. A motion in arrest of judgment lies only for a substantial defect, patent upon the face of the record.

Art. 522. No defect that is merely formal, or cured by verdict, or that cannot be ascertained without an examination of the evidence, is good ground for arresting judgment.

Art. 523. The motion in arrest of judgment can be filed only after verdict, but must be disposed of before sentence.

Art. 524. If judgment be arrested for any cause fatal to the indictment, the accused is entitled to his discharge, but is subject to be indicted anew; if the judgment be arrested for any cause fatal to the verdict, but not to the indictment, the accused shall be remanded to wait a new trial.

TITLE XXVIII.

OF SENTENCE.

Art. 525. In all criminal cases at least twenty-four hours shall elapse between conviction and sentence, unless the accused waive the delay and ask for the imposition of sentence at once; provided that it shall be within the discretion of the trial court, and not subject to the review of any other court or judge, to grant or to refuse to grant a longer delay than twenty-four hours between conviction and sentence.

Art. 526. A valid sentence must rest upon a valid verdict, indictment and statute, and everything essential to punishment must be found by the verdict and alleged in the indictment.

Art. 527. Sentence must be pronounced orally and in the presence of the accused and be recorded in English on the minutes of the court. No other formalities are requisite to its validity.

Art. 528. No person convicted of any offense, capital or other, need be asked, before being sentenced, "Have you anything to say why the sentence of the court should not be pronounced against you?"

Art. 529. No sentence imposed under the provisions of the statute violated is cruel or unusual, if the statute is itself constitutional.

Art. 530. Although the sentence imposed be in every respect legal, it is within the power of the judge to amend or change the same, within the limits of his discretion, up to the beginning of the execution of the sentence.

Art. 531. When the sentence imposed is illegal, it may be reviewed either at the instance of the State or of the defendant, in an appealable case by appeal, in an unappealable case by certiorari and prohibition; provided that nothing in this article contained shall be so construed as to deprive any person of his right, in proper cases, to the writ of habeas corpus.

Art. 532. When any person shall have been sentenced to a term of imprisonment, in default of the payment of a fine, such person shall, at any time before expiration of such term of imprisonment, be entitled to his release, upon paying to the sheriff or other officer in whose custody he shall be, provided all the costs of prosecution shall have been paid, a sum of money which shall bear the same proportion to the fine imposed as the term of alternative imprisonment yet to run shall bear to the whole term of alternative imprisonment.

Art. 533. Whenever any person shall be sentenced to imprisonment in the State Penitentiary or at hard labor, otherwise than for life, or where the maximum penalty does not exceed one year, or the person convicted of treason, arson, rape, attempt to commit rape, crimes against nature, incest, burglary, bank and homestead officials misusing funds of the depositors, or other funds entrusted to such

officials, Notaries Public who are defaulters, train wreckers, kidnapers and dynamiters, it shall be the duty of the District Judge to sentence such person to an indeterminate sentence; the minimum of such sentence shall not be less than the minimum term of imprisonment fixed by the statute under which the person shall have been convicted, nor more than two-thirds of the maximum sentence imposed and the maximum not more than the maximum fixed in such statute; provided, that whenever any District Judge imposes any sentence provided for in this article, he shall attach to the judgment carrying out such sentence, a short statement or account of the crime committed and a short statement of the character of the person sentenced, in all cases where the minimum sentence is one year or more.

Art. 534. When there is a conviction of any felony in the District Court of this state, except murder, rape, perjury, burglary of a dwelling, robbery, arson, incest, bigamy, abortion and assault with intent to rape, the court may suspend the sentence when the jury shall find in their verdict that the defendant has never before been convicted of a felony in this state or any other state and shall recommend that the sentence be suspended.

Art. 535. The court shall permit testimony and submit the question in all felony trials, where there may be a conviction of any crime other than set out in article 534 hereof, as to the general reputation of the defendant, to enable the jury to determine whether to recommend a suspension of sentence and as to whether the defendant has been convicted of a felony, but such testimony shall be submitted only upon the request of the defendant, provided that in all such cases sentence may be suspended if the jury recommends it in their verdict. Provided further that in such cases, if the sentence be suspended, neither the verdict of conviction nor judgment entered thereon shall become final, except under the conditions and in the manner herein provided.

Art. 536. When the jury recommends the suspension of sentence, the court may sentence the defendant, but suspend same, and the judgment of the court on that subject

shall be that the judgment of conviction shall be suspended during good behavior of the defendant. By the term "Good Behavior" in this Code is meant that the defendant shall not be convicted of any felony during the time of such suspension.

Art. 537. Upon the final conviction of the defendant of any other felony, pending the suspension of sentence, the court granting such suspension shall cause the arrest of the defendant if he is not then in the custody of the court, and during a term of the court shall pronounce sentence upon the original judgment of conviction, and shall cumulate the punishment of the first with the punishment of any subsequent conviction or convictions, and in such case no new trial shall be granted in the first conviction.

Art. 538. In any case of suspended sentence as provided herein, upon the expiration of the time assessed as punishment, the defendant may make his written and sworn application for a new trial and dismissal of such case, stating therein, that since such former trial and conviction, he has not been convicted of any felony, and that there is not now pending against him any felony charge, which application shall be heard by the court during the first term after it is filed, and if it shall appear to the court upon the hearing of such application, that the defendant has not been convicted of any other felony, the court shall enter an order reciting the fact and shall grant the defendant a new trial and shall then dismiss said cause, provided, that if the defendant is prevented from disability or other good cause from applying to the court to have the judgment of conviction set aside at the time provided for, he may make such application at the first term when such physical disability or other good cause no longer exists.

After setting aside and dismissal of any judgment of conviction as herein provided for, the fact of such conviction shall not be shown or inquired into for any purpose, except where the defendant has again been indicted for a felony and seeks the benefit of a suspended sentence.

Art. 539. If at the expiration of the time assessed as punishment there be pending against the defendant any

other charge of felony, the court shall upon the application of the defendant, which shall be in writing and shall state under his oath that he is not guilty of such charge, further suspend the sentence to await the final disposition of such other prosecution.

Art. 540. When there is a conviction of a misdemeanor in any court in this state, the judge may suspend sentence if he shall find that the defendant has never before been convicted of any felony or misdemeanor. The court shall permit testimony as to the general reputation of the defendant and as to whether the defendant has been convicted of a misdemeanor or felony but such testimony shall be submitted only upon the request of the defendant. Provided further that if sentence is suspended neither the verdict of conviction nor the judgment entered thereon shall become final except under the conditions and in the manner provided for herein.

Art. 541. When the judge suspends sentence as provided for in article 540, the entire proceedings relative thereto shall be the same as set out in previous articles of this title relating to suspended sentences.

Art. 542. When sentence is suspended the defendant shall be released upon his recognizance in such sum as may be fixed by the court during such suspension.

TITLE XXIX.

OF APPEAL.

Art. 543. No other than a suspensive appeal is allowable in any criminal case.

Art. 544. No appeal lies in any criminal case, except as otherwise provided in this Code, from any order, ruling or judgment which does not finally dispose of the case. The prosecution and the defense have each the right in an appealable case to appeal from a final prejudicial judgment.

Art. 545. A case is finally disposed of by any judgment which dismisses the prosecution, whether before or

after verdict, that grants or refuses to grant a new trial, that arrests or refuses to arrest judgment, or that imposes sentence.

Art. 546. The party desiring to appeal in a criminal case shall make in open court a motion for an appeal verbally or in writing, within three judicial days after the rendition of the judgment complained of.

Art. 547. The judge shall, upon the making of the motion, grant an order of appeal, and shall fix in said order the return day.

Art. 548. There is no appeal until there is an order of appeal, but no person who has made his motion within the legal delay can be deprived of his right to such order by any fault or omission on the part of the trial judge.

Art. 549. After an appeal has been granted no further action in the case can be taken by the trial judge; provided, that as to matters ministerial or not in controversy on appeal, the trial court may render interlocutory orders and definitive judgments.

Art. 550. Every appeal to the Supreme Court shall be returnable within not less than fifteen days nor more than sixty days from the date of the order of appeal. All other appeals shall be returnable as now provided by law.

Art. 551. The failure of the appellant to see to it that the transcript is filed within three judicial days after the return day is an abandonment of the appeal, unless the appellate court have, before the expiration of the said three days, granted additional time for the filing of the transcript.

Art. 552. If the appellant be a fugitive from justice on the return day or on the day fixed for the hearing of his appeal, the appeal will be dismissed.

Art. 553. No appeal bond shall be required in any criminal case.

Art. 554. No person convicted of a felony shall be discharged on bail pending his appeal; provided, that when a minimum sentence of less than three years at hard labor is

actually imposed, bail shall be allowed pending appeal and until final judgment.

Art. 555. Whenever an accused shall have taken an appeal in a misdemeanor case, the trial judge shall exact of him a bond with good and solvent sureties, in such sum as the trial judge shall fix, conditioned upon the appearance of said accused in the trial court to receive such sentence as the appellate court shall have affirmed.

Art. 556. In case of an appeal from a judgment rendered in a criminal case by any District Court, the clerk of said court shall at once proceed to prepare and transmit the transcript to the clerk of the Supreme Court at New Orleans.

Art. 557. In case of an appeal from a judgment of a judge of the Criminal District Court for the Parish of Orleans, to the Criminal District Court, the stenographer shall immediately transcribe all of his notes and turn them over to the chief clerk, who shall prepare the record and file the same in the clerk's office of the appellate court. When the appeal is to the Criminal District Court the record shall consist of the affidavit, information or indictment, bond, testimony, and every document, instrument, property or thing whatsoever in possession of the court, filed or pertaining to the cause.

Art. 558. In case of appeal from a judgment rendered in a criminal case by any City Court, the Parish of Orleans excepted, the city judge shall at once make a transcript of the proceedings in the case, and shall file the same in the clerk's office of the court to which the appeal is returnable.

Art. 559. The testimony of the witnesses on the question of guilt or innocence has no place in the transcript, and no defendant can by means of bills of exception, or by any other device, have such testimony, or a synopsis thereof, put into the transcript; provided, that this article shall not apply to any appeal taken from a judge of the Criminal District Court of the Parish of Orleans to the Criminal District Court of said Parish.

Art. 560. To sustain any appeal the record and the certificate of the officer whose duty it is to make up the transcript shall be complete.

Art. 561. No judgment shall be set aside, or a new trial granted by any appellate court of this State, in any criminal case, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice or constitutes a substantial violation of a constitutional or statutory right.

Art. 562. Unless the error is patent on the face of the record, an appellate court cannot consider or determine any question which was not submitted to and passed upon by the trial judge.

Art. 563. No new trial can be granted on appeal unless a motion for same has been made and refused in the lower court; provided that an appeal may be taken from the sentence imposed by a City Court to the District Court, though neither a motion for a new trial nor in arrest of judgment had been filed in the lower court.

Art. 564. An assignment of errors is a written statement filed by the appellant in the appellate court, within ten days after the transcript is brought up, setting up some error of law apparent on the face of the record. It cannot be based upon any error disclosed by the aid of the evidence taken in the case. When the certificate of the officer who has made up the transcript shows that the transcript is complete, the appellant may at any time, orally or in brief, call the attention of the court to any error apparent on the face of the record, without making any formal assignment.

Art. 565. All judgments in all criminal cases rendered by a District Court under its appellate or supervisory jurisdiction shall become final and executory on the third calendar day after rendition, in term time and out of term time, unless the last day shall fall on a legal holiday or

legal half-holiday, in which event the delay shall be extended to the first day thereafter not a legal holiday; provided that in the interval a rehearing shall not have been applied for; provided, further, that in the recess of the court the judge shall have the right to dispose, at chambers, of any application for rehearing.

Art. 566. Upon the final decision of any criminal cause in any appellate or supervisory court, the clerk of such court shall transmit a certified copy of the decree to the court from which the appeal was taken, which shall, as soon as it reaches the lower court, be filed and ordered to be executed.

Art. 567. All judgments in all criminal cases rendered in the Supreme Court, under its appellate jurisdiction, shall become final and executory on the fifteenth calendar day after rendition, in term time, and out of term time, unless the last day shall fall on a legal holiday, when the delay shall be extended to the first day thereafter not a legal holiday; provided, that in the interval a rehearing shall not have been applied for; provided, further, in the recess of the court, the court shall have the right to dispose, at chambers, of applications for rehearing.

TITLE XXX.

OF THE EXECUTION OF SENTENCES.

Art. 568. The sheriff, as soon as any sentence to imprisonment without hard labor, or to imprisonment without hard labor in default of the payment of fine and costs, shall have become final, shall, unless the Governor shall have reprieved the person convicted, proceed forthwith to the execution of said sentence.

Art. 569. The sheriff, within fifteen days of the date upon which any sentence to imprisonment at hard labor shall have become final, shall, unless the Governor shall have

reprieved said convict, deliver the convict to the warden of the State Penitentiary at Baton Rouge.

Art. 570. No person sentenced to death shall be executed until a certified copy of the indictment, verdict and sentence shall have been sent to the Governor, and a warrant shall have been issued by him, under the seal of the State, directed to the sheriff of the court wherein the sentence or judgment was passed, commanding the sheriff to cause the execution to be done on the person so condemned in all things according to the judgment against him, and upon the date named in said warrant.

Art. 571. The sheriff of the parish in which said execution is to take place, or a duly authorized deputy, or a competent person selected by him, shall execute the criminal in conformity with the death warrant issued in the case. Until the time of his execution the convict shall be kept in solitary confinement at the parish prison, and no one shall be allowed access to him without an order of court, except the officers of the prison, his counsel, his physician, his spiritual adviser, his wife, children, father, mother, brothers and sisters.

Art. 572. Every sentence of death imposed in this State shall be executed at the parish prison of the parish in which the crime was committed for which said person was convicted, or in the parish to which venue has been changed, and shall take place within an enclosed room entirely cut off from view of all, except those in the room, and said execution shall be by hanging the convict by the neck until he is dead.

Art. 573. Every execution of the death sentence shall take place in the presence of the sheriff of the parish, or of one of his deputies, of the coroner of the parish or of a practicing physician designated by said coroner, of a priest or minister of the gospel, if the convict so requested, and of not less than five nor more than seven other witnesses, all citizens of the State of Louisiana.

Art. 574. When the sentence shall have been executed, the sheriff or his deputy performing the execution, shall

make a proces verbal of said execution immediately thereafter, which proces verbal shall recite the manner and date of said execution and shall be attested by said sheriff, or his deputy, and by all of the witnesses and said proces verbal, when so signed, shall be filed with the clerk of the court in which the sentence shall have been imposed.

TITLE XXXI.

OF REPRIEVE AND PARDON.

Art. 575. The Governor shall have power to grant reprieves for all offenses against the State; and, except in cases if impeachment, or treason, shall, upon the recommendation in writing of the Lieutenant Governor, Attorney General and presiding judge of the court before which the conviction was had, or any two of them, have power in his discretion to grant pardons, commute sentences, and remit fines and forfeitures, after conviction. In case of treason he may grant reprieves until the end of the next session of the Legislature, in which body the power of pardoning is vested.

Art. 576. All sessions of the Board of Pardons shall be public.

Art. 577. The Board of Pardons may adopt for its governance such rules as they may deem proper, not contrary to law; provided that the board shall not take up for consideration any application for a pardon, until the district attorney of the parish in which the person applying for the pardon shall have been convicted, shall have been notified and shall have had ample opportunity to attend the session at which said application shall be considered.

TITLE XXXII.

IN RESPECT TO THE REPORTING, TABULATION AND PUBLICATION OF STATISTICS CONCERNING CRIME.

Art. 578. It shall be the duty of every justice of the peace, constable, sheriff, coroner, police officer and all other peace officers to report within 24 hours to the District Attorney of the parish upon forms provided for the purpose every crime which shall come to his knowledge.

Art. 579. It shall be the duty of every District Attorney on or before the tenth day of each month to summarize in the form or manner prescribed by the Attorney General the reports required to be submitted to him under the terms of the preceding article.

Art. 580. It shall be the duty of the Attorney General to provide for the purposes described in this title proper forms, postage, envelopes and detailed instructions. He shall in the event of the violation of any of the terms of this title initiate the proper legal proceedings to enforce the penalty prescribed herein. He shall appoint for the purpose of supervising the work herein described an assistant Attorney General who shall be skilled in statistics and a competent administrator and provide suitable and adequate clerical assistance for such statistician.

Art. 581. The Attorney General shall cause to be prepared semi-annually a compilation of the information which he gathers through the provisions of this title and shall publish the same and send copies to newspapers, judges, district attorneys, sheriffs and to such citizens as shall be interested. This compilation of information shall show in such detail as is suitable and with appropriate tables, graphs, and diagrams the crime situation of the state indicated comparing with other half of the same year and with similar periods in other years.

Art. 582. The crimes which shall be reported under this title shall include all felonies and such misdemeanors

as the Attorney General may designate under such classification as the Attorney General shall direct. Felonies shall be classified in a form convenient for reporting and for compilation. Such classes should include the following with subdivisions as the Attorney General shall designate:

Murder; manslaughter, robbery and attempted robbery; burglary; grand larceny; carrying concealed weapons; crimes of fraud; perjury; rape and felonious assaults involving sex; all other felonies.

Art. 583. In cities of 10,000 or more the provisions of this title shall be carried out by the Chief of Police who shall report directly to the Attorney General in the manner prescribed for the District Attorney.

Art. 584. Any officer violating any of the provisions of this title shall be fined not less than fifty dollars or more than five hundred dollars, and after punishment for three such offenses shall forfeit the office which he shall hold.

TITLE XXXIII.

REPEALING CLAUSE.

Art. 585. All laws or parts of laws contrary to or in conflict with the provisions of this Code are hereby repealed; provided that nothing herein contained shall apply to offenses committed prior to the adoption hereof, but every such offense shall be prosecuted and punished in the manner provided by the laws in force at the time of the commission of said offense; nor shall this Code affect any power conferred by law upon any court martial, or military authority or military officer to impose or inflict punishment upon offenders.

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